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On the Job

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Declaration

I declare that this thesis is my own work and that it has not been submitted for a degree at another university. The thesis contains no work published elsewhere.

1 Laying the Foundations

Questions about society's arrangement and distribution of work are the source of great political controversy. The issues involved are highly divisive, and these divisions do not neatly map onto familiar political disputes. That is, even amongst those of similar political persuasion, there is considerable disagreement about the proper use of political power in this regard. Should we pursue full employment, discourage 'overwork', make job-holders more secure, or incentivise workers to take on socially beneficial work? Whilst we can make some progress with these questions by consulting with our intuitions, any fully satisfactory response must make use of an account of the political principles and social institutions that ought to guide society's arrangement and distribution of work. My main aim in this thesis is to make some progress in developing such an account – an account of justice in work.

The purpose of this introductory chapter is two-fold. First, I aim to lay the foundations of the remainder of the thesis by clarifying a number of my assumptions. In some cases, I undertake a further step and indicate my reasons for upholding these assumptions. My second aim is to provide an overview of this thesis's aims, structure, and conclusions. The purpose of this is to clarify links between chapters and, thus, to make my later arguments easier to follow.

I begin in section 1.1, by clarifying the subject matter of my inquiry – work. Following this, in section 1.2, I then draw attention to the political and philosophical significance of questions concerning work. In doing so, I illuminate the value of having an account of justice in work. Over the course of the subsequent three sections, I then issue three distinct sets of remarks relating to the methods I use in this thesis. In section 1.3, I clarify how I understand 'justice' and 'legitimacy', as well as the

relationship between the two. In section 1.4, I examine and specify the distinctive requirements of principles of political morality, by which I mean moral principles of political action.¹ In section 1.5, I address the relationship between questions regarding society's arrangement and distribution of work and questions regarding the just distribution of benefits and burdens more generally. Finally, in section 1.6, I conclude with a brief preview of the thesis. This preview affords me the opportunity both to clarify the more specific questions and literature with which I engage, as well as to indicate some of the conclusions that I later establish.

1.1 Work

This thesis is concerned with work. But, *what is work?* This is simultaneously a very good and a very bad question with which to begin. It is a very good question as it prompts me to offer a clear delineation of the subject matter of the thesis. An investigation into questions about work is in some way distinct from an investigation into global justice, the family, climate change, or bioethics, for example. Moreover, in the absence of any idea of what I shall mean by 'work', the questions with which this thesis is concerned may simply be impossible to answer: if we have no idea what work is, then it will be impossible to answer questions about its appropriate arrangement and distribution.

However, it is also a very bad question with which to begin. This is because it invites us to engage in a form of conceptual analysis that is inessential to our

¹ For elaboration on what qualifies as political action, see Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 3-6.

purposes.² Put in stark terms, we can theorise about how we ought to treat bankers, surfers, or parents without recourse to the conceptual matter of whether it is a misuse of a label to say that banking, surfing, or parenting are properly regarded as ‘work’.³ If they are all properly regarded as work, then there is no problem. If they are not all properly regarded as work, then instead we may suppose not that I am interested in work, but instead that I am interested in work*, where work* is defined so as also to include whichever of those activities is not properly regarded as work. The important point here is that, throughout this thesis, I am concerned with our reasons for action and what we owe (to each other); I am not concerned with semantics.

In order to circumvent this problem, I can stipulate a definition of work such that, very roughly, it corresponds to *paid employment*. There are three advantages to doing this. First, as I will soon explain, it enables us to engage with a set of politically and philosophically important questions. Second, it is consistent with this approach that closely related activities, such as volunteering or parenting, say, should be governed by similar or identical political principles. In other words, though I am not concerned directly with these closely related activities, it is in principle consistent with

² In addition to being inessential, the task of defining work may also be impossible. A number of authors acknowledge that, if we attempt to offer a definition of work that is latent in common discourse, we may be forced to accept the conclusion that ‘no unambiguous or objective definition of work is possible’. See Keith Grint, *The Sociology of Work* (Cambridge: Polity Press, 2005), 6.

³ In the same vein, Joseph Raz begins his discussion of the concept of freedom by noting: ‘It is only important to remember that that concept is a product of a theory or a doctrine consisting of moral principles for the guidance and evaluation of political actions and institutions. One can derive a concept from a theory but not the other way round.’ See Raz, *The Morality of Freedom*, 16. For similar worries about disputes over what counts as a human right, see Victor Tadros, ‘Rights and Security’, in Rowan Cruft, S. Matthew Liao, and Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2014).

my approach that we ought to think about them in precisely the same way that we think about paid employment. Third, this definition of work is sufficiently close to the definition utilised by other authors whose contributions bear upon this inquiry.⁴ Together, these three reasons point to the fact that my definition of work helps to enhance rather than to obscure this thesis's political and philosophical contribution.

It may be helpful here to issue two further clarifications. First, we can distinguish between those benefits and burdens that are *internal* to work, such as the ideal of self-realisation, and those that are *external* to work, such as the salary. For now, the vagueness of this distinction, to which I return in the next chapter, does not matter. I want to draw attention to the fact that I am concerned with the arrangement and distribution of *both* the internal and external benefits and burdens of work. It is therefore perhaps more accurate to say that I am concerned with questions concerning the arrangement and distribution of work *and the benefits and burdens that attach to it*. Given how cumbersome this phrase is, though, I shall continue to refer simply to 'work'.

Second, let me comment on the relationship between work and jobs. Jobs are vehicles through which we assign individuals work.⁵ Thus, to claim that an individual has a job as a professional darts player, say, is merely to claim that she undertakes paid employment as a professional darts player. A corollary of this is that, for the purposes

⁴ For example, see Russell Muirhead, *Just Work* (Cambridge, MA.: Harvard University Press, 2004), 4-6.

⁵ Many will also be tempted to draw a further distinction between jobs, careers, and occupations. The central feature of this distinction, it is sometimes claimed, is temporal. Whereas jobs are short-term, careers and occupations refer to more long-term projects. For example, see Norman Care, 'Career Choice', *Ethics*, 94 (1984), 283-302 at 285. Though something like this distinction may be latent in common discourse, I see no need to employ it in this thesis. Instead, and for simplicity, I shall stick to the more restricted language of work and jobs.

of this thesis, volunteering and parenting (and perhaps workfare) are not jobs.⁶ This is because they do not involve paid employment. No doubt, this conclusion will sound odd to some, but, given what I have said about the relevance of conceptual analysis to my task, this should not in itself be troubling.

1.2 The Importance of Work

Why defend an account of justice in work? There are many good answers to this question, but I shall focus on only two. The first refers to the fact that work is a huge part of many individuals' lives; it is central to many individuals' *ambitions*.⁷ This is because most individuals spend a very large portion of their lives at work, and attach a great deal of significance to this time.⁸ It is important to many individuals not only that their jobs are well-paid, but also that they enjoy some freedom at work, as well as the opportunity to push themselves. For this reason, it is not surprising that John Rawls claims that, more so than a high material standard of life, 'what men want is meaningful work in free association with others'.⁹ Moreover, work's influence even extends beyond this: not only does it influence the extent to which an individual is able

⁶ It is less clear that workfare does not qualify as providing a job, since some of these workers do receive an income, either in the form of a wage or in the form of benefits in kind.

⁷ I use this term synonymously with 'a conception of the good', defined as 'an ordered family of final ends and aims which specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life'. See John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA.: Harvard University Press, 2001), 19.

⁸ For discussion of these claims, see Andrew Williams, 'Basic Income and the Value of Occupational Choice', *Basic Income Studies*, 1 (2006a), 1-5.

⁹ John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, MA.: Harvard University Press, 1999a), 257.

to pursue her ambitions, it is also likely to influence her attitudes towards both others and herself, and, therefore, may pervasively effect almost all of her social interactions. An obvious implication of these remarks is that injustices in this aspect of an individual's life are likely to be particularly grievous and wide-reaching, and, other things being equal, especially politically urgent.

Second, for the most part, political philosophers and activists have focused their attention on only a small range of issues concerning the arrangement and distribution of work.¹⁰ These include questions about wage inequality, Rawlsian fair equality of opportunity, and discrimination. The issues are important, but they do not exhaust our concern with work, and they may not even be amongst the *most* important.

There are signs of change, however. Alex Gourevitch notes that, in addition to contesting wealth and income inequality, recent anti-capitalist protests have also focused on the benefits and burdens that are internal to work.¹¹ Protestors have called for a transformation in the kind of work that jobs typically involve. Significantly, we witness a similar move within academia and, most significantly, from liberal theorists, who have, with notable exceptions,¹² traditionally neglected the topic.¹³ (Even Rawls

¹⁰ The obvious exception to this is provided by Karl Marx, whose work on alienation, exploitation, and the labour theory of value has been very influential. See Karl Marx, *Karl Marx: Selected Writings*, ed. David McLellan (Oxford: Oxford University Press, 1977). For commentary on these themes in Marx's work, see G. A. Cohen, *History, Labour and Freedom: Themes from Marx* (Oxford: Clarendon Press, 1988).

¹¹ Alex Gourevitch, 'Labor Republicanism and the Transformation of Work', *Political Theory*, 41 (2013), 591-617 at 592.

¹² I mainly have in mind the contributions of Richard Arneson. See Richard Arneson, 'Meaningful Work and Market Socialism', *Ethics*, 97 (1987), 517-45; Richard Arneson, 'Is Work Special? Justice and the Distribution of Employment', *American Political Science Review*, 84 (1990a), 1127-47; and Richard Arneson, 'Meaningful Work and Market Socialism Revisited', *Analyse & Kritik*, 31 (2009), 139-51. See also Kory Schaff (ed.), *Philosophy and the Problems of Work: A Reader* (Lanham, MD.: Rowman & Littlefield, 2001).

fails to specify in any detail the implications for work of either justice as fairness or political liberalism.¹⁴) Whilst there is a little discussion of *how* precisely we ought to respond, there is an emerging consensus that certain arrangements and distributions of work remain morally objectionable, even once we address the problems raised by wage inequalities, Rawlsian fair equality of opportunity, and discrimination. Together, these highlight the political and philosophical timeliness of an investigation into the political principles and social institutions that ought to guide society's arrangement and distribution of work.

1.3 Justice and Legitimacy

My investigation into society's arrangement and distribution of work makes use of the ideas of 'justice' and, to a lesser extent, 'legitimacy'. For this reason, it will help for me to specify how I use these terms, which is a task that requires a short detour.

¹³ See Samuel Arnold, 'The Difference Principle at Work', *The Journal of Political Philosophy*, 20 (2012), 94-118; G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA.: Harvard University Press, 2008), ch. 5; Anca Gheaus and Lisa Herzog, 'The Good (and Bads) of Work: Why More Than Fair Pay Matters for Justice', (unpublished manuscript); Nien-Hê Hsieh, 'Justice in Production', *Journal of Political Philosophy*, 16 (2008a), 72-100; Russell Keat, 'Anti-Perfectionism, Market Economies, and the Right to Meaningful Work', *Analyse & Kritik*, 31 (2009), 121-38; Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (Oxford: Oxford University Press, 2003).

¹⁴ Rawls makes a number of claims about how work will be arranged in a just society, but the justifications for these claims are sometimes left unclear. Samuel Arnold concludes that 'Rawls's views on work are somewhat of a puzzle'. See Arnold, 'The Difference Principle at Work', 95. See Rawls, *A Theory of Justice*, §65; Rawls, *Justice as Fairness*, §53.

Within practical philosophy, broadly understood, there are three sorts of questions that we normally ask.¹⁵ First, we can investigate the goodness or badness of outcomes and their various good- or bad-making features. This is an exercise in *value theory*. Second, we can attempt to identify our reasons for actions, duties, and rights, with an eye to determining the moral permissibility or impermissibility of certain conduct. This is an exercise in *normative theory*. Finally, we can analyse the blameworthiness or praiseworthiness of various individuals. This is an exercise in *ascriptive theory*.

We can ask each of these sorts of questions as part of an investigation into various aspects of society's arrangement and distribution of work. First, we could ask the following question in value theory: how good or bad are the various states of affairs that are brought about by various political principles and social institutions that guide society's arrangement and distribution of work? Second, we could ask the following question in normative theory: which political principles and social institutions ought to guide society's arrangement and distribution of work? Finally, we could ask the following question in ascriptive theory: when ought I to blame the state (or another agent) for failing to support those political principles and social institutions that ought to guide society's arrangement and distribution of work?

I am concerned with a specific set of *normative* questions – that is, with a specific set of questions seeking to determine the moral permissibility of certain actions. It is tempting, therefore, to stipulate a definition of justice that directly tracks moral permissibility. According to this view, an act is just if and only if it is morally permissible. By implication, an act is unjust if and only if it is morally impermissible.

¹⁵ I take this typology, as well as this terminology, from Joseph Raz, *Practical Reason and Norms* (Princeton: Princeton University Press, 1990), 11-12.

To say that an institution or set of rules, say, are just is to say that the decisions that bring about those institution or set of rules are morally permissible ones.

This position is too simplistic. This is because it blinds us to the possibility that there may be some actions that, though morally permissible, we ought not to regard as just. To see this, let's consider the example of a democratically-mandated decision to set up institutions that seek to maximise overall well-being subject to a constraint guaranteeing an adequate minimum for everyone. This decision is, according to Rawls, less just than establishing institutions that seek to maximise the position of the least advantaged subject to respecting certain rights. Despite this, given that it is democratically mandated, such a decision might still be morally permissible.¹⁶ In short, we have a decision that is morally permissible, though not just.

Should we simply bite this bullet, and thereby treat both decisions as just in virtue of their moral permissibility? No. This is because an unfortunate implication of doing so is that it deprives us of the theoretical tools to determine which action of a set of morally permissible actions is the best one. This is unsatisfying both politically and philosophically. It is politically unsatisfying because it would dispossess individuals of a framework to help them determine which decision (of a set of morally permissible ones) they ought to support. It is philosophically unsatisfying because it takes off of the table a number of important normative questions. After all, it remains philosophically interesting to theorise about which decision (of a set of morally permissible ones) is the best.

Rawls offers a more promising alternative, by distinguishing between justice and legitimacy.¹⁷ Questions of justice concern the conditions the fulfilment of which

¹⁶ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), xlviii-xlix and 421-33.

¹⁷ Ibid.

ensures that everyone's interests are given equal weight. More specifically, it is axiomatic of a just society that we exercise political power in a way that respects the freedom and equality of all individuals, and that we achieve this by treating all individuals' interests as equally weighty.¹⁸ It is consistent with this that due respect for individuals' moral status prohibits treating them in certain ways – that is, that due respect for individuals' moral status requires that we not violate their rights, for example. By contrast, questions of legitimacy concern the conditions the fulfilment of which is sufficient for a decision to possess political authority, in the sense that it imposes on individuals a *pro tanto* moral duty to obey its commands, even if they think them unjust. Decisions that fail to treat all individuals' interests as equally weighty, and hence are unjust, may none the less command political authority, and hence remain legitimate. Though there is widespread disagreement about the grounds of legitimacy, I shall not seek to resolve that dispute here.¹⁹

¹⁸ Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA.: Harvard University Press, 2011), chs 15-18.

¹⁹ Very roughly, we can distinguish between three views concerning the source of legitimacy. According to the first, the legitimacy of a decision depends on the quality of its outcomes. For a defence of this view, see Raz, *The Morality of Freedom*; and David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2007). According to the second, the legitimacy of a decision depends on the consent of those subject to or affect by it. For a defence of this view, John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001). According to the third, the legitimacy of a decision depends on its democratic pedigree. For a defence of this view, see Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999). For more complex, hybrid views, see Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008); and George Klosko, *The Principle of Fairness and Political Obligation* (Lanham, MD.: Rowman and Littlefield, 2004).

There is a complex relationship between justice and legitimacy.²⁰ Rawls illuminates it noting that ‘A legitimate procedure gives rise to legitimate laws and policies made in accordance with it’. He adds: ‘Neither the procedures nor the laws need be just by a strict standard of justice, even if, what is also true, they cannot be too gravely unjust’.²¹ On this view, legitimacy is a doubly-permissive concept. It is not merely that shortfalls from justice can be legitimate when they result from a just procedure, they can also be legitimate when they result from a procedure that is not itself perfectly just. Despite this permissibility, we ought still to maintain that serious shortfalls from justice can never be legitimate, even if produced by a procedure that, absent the grave injustice, would be perfectly just. As Rawls points out ‘At some point, the injustice of the outcomes of a legitimate...procedure corrupts its legitimacy, and so will the injustice of the political constitution itself’.²²

My main concern is with the demands of justice with respect to society’s arrangement and distribution of work. It is, therefore, consistent with the account that I defend that there are alternative political principles and social institutions that, though less just, may still command political authority, providing that they result from a legitimate procedure. I leave this possibility open.

1.4 The Demands of Political Morality

One way in which to develop an account of justice in work is by reference to *labour perfectionism*. Labour perfectionism consists of two claims: (1) meaningful work

²⁰ For discussion of the relationship between justice, legitimacy, and democracy, see Zofia Stemplowska and Adam Swift, ‘Justice, Legitimacy, and Democracy’, (unpublished manuscript).

²¹ Rawls, *Political Liberalism*, 428.

²² Ibid.

(however we define it) is necessary for, or at least conducive to, living a flourishing life; and (2) we ought to exercise political power in a way that promotes and protects flourishing lives.²³ Labour perfectionism has the familiar implication that we ought to arrange social institutions to secure for individuals meaningful work.²⁴

Labour perfectionism has powerful initial appeal. The fact that certain arrangements of work preclude, or act as an obstacle to, individuals leading flourishing lives seems clearly to be relevant to the development of an account of justice in work. Indeed, as Russell Muirhead points out, to fail to pay attention to this idea is to fail to pay attention to ‘the source of the reasons that motivate us most vitally in politics and elsewhere’.²⁵ A critic of all forms of perfectionism, Jonathan Quong, similarly concedes that there is ‘enduring appeal’ to the idea that we ought to exercise political power so as to promote and protect flourishing lives. In particular, he notes that this reflects the ‘deeply attractive and intuitively compelling’ thought that ‘the aim of the state (or at least one of its major aims) should be to improve the lives of citizens’.²⁶

Despite its initial appeal, labour perfectionism is not a plausible starting position for an investigation into justice in work. This is because our reasons to exercise political power in a way that promotes and protects flourishing lives are typically not decisive reasons. That is, these reasons are typically defeated by other reasons.²⁷ The argument for this conclusion draws upon familiar arguments given by anti-perfectionists, such as Rawls.

²³ I take this term from White, *The Civic Minimum*, 89.

²⁴ Karl Marx’s writings can be read as providing a partial defence of labour perfectionism. See Marx, *Karl Marx*, 85-95. See also Arneson, ‘Meaningful Work and Market Socialism’, 519-20.

²⁵ Muirhead, *Just Work*, 24.

²⁶ Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2011), 30.

²⁷ Rawls, *Political Liberalism*, 386.

This response to labour perfectionism begins with the *disagreement claim*, according to which, at least within societies that protect traditional liberal rights, there will be irreducible disagreement amongst individuals about the relationship between meaningful work and human flourishing. This disagreement is the inevitable outcome of the free exercise of human reason, and it is explained by what Rawls calls the *burdens of judgment*.²⁸ The disagreement claim has two dimensions. First, individuals will disagree about what makes work meaningful. Here, I am reminded of a famous passage from *Anna Karenina*, where Leo Tolstoy describes the meaning that Levin finds in the hard labour of mowing the fields:

The longer Levin mowed, the oftener he felt the moments of unconsciousness in which it seemed not his hands that swung the scythe, but the scythe mowing of itself, a body full of life and consciousness of its own, and as though by magic, without thinking of it, the work turned out regular and well-finished of itself. These were the most blissful moments.²⁹

What is significant is that Levin seems to find meaning in work that is highly repetitive, work in which only very few individuals would be able to find any meaning.

Second, even if individuals were not to disagree about what makes work meaningful, they will inevitably disagree about how important this is. Whereas some individual attach great significance to the pursuit of meaningful work, others are content with meaningless work, providing that they are afforded plenty of opportunities to pursue other ends, such as spend time with friends or family.

The disagreement claim is significant because it has the implication that, when we justify the exercise of political power by referring to claims about the relationship

²⁸ Ibid., 54-8.

²⁹ Leo Tolstoy, *Anna Karenina* (Oxford Oxford University Press, 1995 [1878]), 252.

between meaningful work and human flourishing, some individuals will inevitably be subject to the exercise of political power that is justified by appeal to reasons whose validity they reject. When this is the case, we risk setting back an individual's interest in being able to identify freely with the constraints that she faces, such that she does not either understand or accept the justifications of those constraints.³⁰ I shall refer to this as her interest in *political autonomy*. I assume that the intuitive appeal of political autonomy is sufficiently clear. Moreover, I shall not say anything further in defence of its existence.³¹ In this respect, this claim operates as a premise of my argument rather than as a conclusion.³²

We can formalise the conclusions so far in terms of the following trilemma, which I call the *liberal's trilemma*.³³

³⁰ Rawls, *Political Liberalism*, 402.

³¹ The ideal of political autonomy is central to Rawls's liberalism. See Rawls, *Political Liberalism*. Moreover, as Rawls notes, the ideal is also present in the work of Jean Jacques Rousseau. See John Rawls, 'The Idea of an Overlapping Consensus', in Samuel Freeman (ed.), *Collected Papers* (Cambridge, MA.: Harvard University Press, 1999b), 426, n. 10; and Joshua Cohen, 'Reflections on Rousseau: Autonomy and Democracy', *Philosophy & Public Affairs*, 15 (1986), 275-97 at 274-88.

³² Jonathan Quong suggests that, when we justify the exercise of political power in this way, we also violate individuals' right to be treated as agents equally capable of planning, revising, and rationally pursuing their own ambitions. See Quong, *Liberalism without Perfection*, 100-07. This is not compelling. If I judge that an individual got it wrong in a given instance, this does not necessarily mean that I judge that she is less than equally capable of getting it right. Similarly, from the fact that my student got a 2:ii, we cannot conclude that she is less than equally capable of getting a 2:i. To this extent, when we justify the exercise of political power in this way, we do not necessarily violate individuals' right to be treated as agents equally capable of planning, revising, and rationally pursuing their own ambitions. For further discussion of this objection, see David Birks, 'Moral Status and the Wrongness of Paternalism', *Social Theory and Practice*, 40 (2014), 483-98 at 488-9.

³³ Andrew Williams, 'Political Constructivism', (unpublished manuscript).

- (1) We should protect certain liberal rights, such as freedom of conscience and freedom of thought.
- (2) We should protect political autonomy.
- (3) We may appeal to any valid reason to justify the exercise of political power.

An implication of the disagreement claim is that, whilst we can accept any pair of these claims, we cannot accept all three. If we accept (1) and (2), we must reject (3). If we accept (1) and (3), we must reject (2). And, if we accept (2) and (3), we must reject (1). I call this a trilemma, since all three of these claims have intuitive force, and so it is not immediately clear which we should reject.

Anti-perfectionists, such as Rawls, claim that we should generally reject (3) in order to protect (1) and (2). In other words, we ought to prioritise the protection of certain liberal rights and political autonomy, even though a consequence of this is that we may not appeal to certain valid reasons to justify the exercise of political power. Our commitment to (1) and (2) therefore imposes on us the need to exercise restraint when we justify the exercise of political power. This is what distinguishes political morality from applied moral philosophy.³⁴

More specifically, a consequence of rejecting (3) is that we ought to justify the exercise of political power by appeal exclusively to reasons that all free and equal individuals can be expected to accept in the light of principles and ideals acceptable to common human reason. I shall call these *public reasons*. Public reasons are a subset of valid reasons, where valid reasons refer to all reasons that an individual has, and so also

³⁴ Rawls writes: 'Neither political philosophy nor justice as fairness is, in that way, applied moral philosophy. Political philosophy has its own distinctive features and problems.' See Rawls, *Justice as Fairness*, 14.

includes non-public reasons, which are reasons that derive from a certain class of sound but controversial claims.³⁵ On this basis, we may affirm the following principle, which Rawls calls the *liberal principle of legitimacy*.³⁶

Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.³⁷

This principle implies that each individual has a normally decisive reason to disregard some valid reasons when she makes her case for the political legislation she supports, i.e. those valid reasons that are non-public. Rawls makes this clear when he issues the following clarification of the principle:

those who believe that fundamental political questions should be decided by what they regard as the best reasons according to their own idea of the whole truth – including their religious and secular comprehensive doctrine – and not by reasons that might be shared by all citizens as free and equal, will of course reject the idea of public reason.³⁸

³⁵ Andrew Williams, 'The Alleged Incompleteness of Public Reason', *Res Publica*, 6 (2000), 199-211 at 201.

³⁶ This term is misleading. The liberal principle of legitimacy is a principle of justice – it helps to the conditions the fulfilment of which ensures that everyone's interests are given equal weight. Despite its name, it is not a principle of legitimacy. Despite this, I shall continue to use this label, since its use in this way is already widespread.

³⁷ Rawls, *Political Liberalism*, 137.

³⁸ John Rawls, 'The Idea of Public Reason Revisited', in Samuel Freeman (ed.), *Collected Papers* (Cambridge, MA.: Harvard University Press, 1999c), 579.

For example, even if an individual has a sound reason to believe that a certain sort of meaningful work is necessary for a flourishing life, she ought not to appeal to this fact when she makes her case for the political legislation she supports. Since this principle therefore has the implication that there is a principled inhibition on appealing to a certain class of valid reasons – these reasons are off the table, so to speak – we can call the resulting position *anti-perfectionist*.³⁹

The political reasoning of an individual guided by the liberal principle of legitimacy exhibits a hierarchical structure: her commitment to the protection of certain liberal rights and the protection of political autonomy demands that she treat certain reasons as irrelevant.⁴⁰ To make this implication clearer, it may help to consider the following structurally analogous case, discussed by T. M. Scanlon. Scanlon considers playing a game of tennis in which, after some reflection, he decides to ‘play to win’. He notes:

Reaching this conclusion involves deciding which reasons will be relevant to how I play. The fact that a certain shot represents the best strategy will count as sufficient reason for making it. I need not weigh against this the possibility that if the shot succeeds then my opponent will feel crushed and disappointed.⁴¹

³⁹ Following Raz, we can say that perfectionism ‘is merely a term used to indicate that there is no fundamental principled inhibition on governments acting for any valid moral reason’, and anti-perfectionism is simply the denial of perfectionism. See Joseph Raz, ‘Facing Up: A Reply’, *Southern California Law Review*, 62 (1989), 1153-235 at 1230.

⁴⁰ Williams, ‘The Alleged Incompleteness of Public Reason’, 210.

⁴¹ T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA.: Harvard University Press, 1998), 51. Scanlon is influenced by the discussion of the hierarchical structure of goals found in Raz, *The Morality of Freedom*, 292-3.

Scanlon's case illustrates one way in which our reasoning may be hierarchical, such that an individual's commitment to one goal (playing to win) determines the reasons that she should treat as relevant when deciding how to act (which shot to play). The same is true with respect to the liberal principle of legitimacy: an individual's commitment to one goal (protecting certain liberal rights and political autonomy) determines the reasons that she should treat as relevant when deciding how to act (which reasons to appeal to when making the case for political legislation).

To be sure, I defend in detail neither the liberal principle of legitimacy nor the implications I suggest it has.⁴² Instead, I draw attention to these claims because, *if correct*, they would impose severe limits on our theorising about justice in work. In particular, they imply a normally decisive reason to develop an account of justice in work that appeals exclusively to public reasons. This prohibits appeals to a variety of claims, including those regarding the relationship between meaningful work and human flourishing.⁴³

(To be sure, there may be exceptions to the liberal principle of legitimacy. If the costs of not appealing to a given valid reason are especially high, they may be sufficient to justify failing to protect either certain liberal rights or political autonomy.⁴⁴

⁴² For powerful defences of this position, see Rawls, *Political Liberalism*; Steven Lecce, *Against Perfectionism: Defending Liberal Neutrality* (Toronto: University of Toronto Press, 2008); and Quong, *Liberalism without Perfection*.

⁴³ There is a further question about the *scope* of the liberal principle of legitimacy. Does the principle apply to the justification of all exercises of political power or only those exercises of political power that concern, say, constitutional essentials and basic justice? For discussion of this issue, see *ibid.*, ch. 9.

⁴⁴ This is consistent with the liberal principle of legitimacy. To see this, let's return to Scanlon's example of playing a game of tennis. I noted that, by reflecting on this case, we realise that an individual's commitment to one goal (playing to win) may determine the reasons that she should treat as relevant when deciding how to act (which shot to play). To repeat, 'The fact that a certain shot represents the

When this is the case, we should reject either (1) or (2). Since I believe that this is only very rarely the case, I shall not discuss this possibility in any further detail.⁴⁵)

We can violate political autonomy through the exercise of both coercive and non-coercive political power. Political power is coercive when it reduces individuals' opportunities; it is non-coercive when it does not. To illustrate the possibility of non-coercive political power, let's suppose that the state has two ways in which to reduce poverty, and one of these ways has the side-effect of enhancing individuals' opportunities to pursue a Christian lifestyle, say, by making it cheaper to pursue. Since this route enhances, rather than reduces, individuals' opportunities, it is non-coercive. Despite this, the principle of liberal legitimacy prevents us from appealing to the value of Christianity in order to select between the two possible routes. This is because, when we justify non-coercive political power by appeal to non-public reasons, some individuals are no longer able to accept the justificatory bases of the constraints they face. Though we do not narrow the constraints that individuals face, our defence of

best strategy will count as sufficient reason for making it. I need not weigh against this the possibility that if the shot succeeds then my opponent will feel crushed and disappointed.' However, as Scanlon notes, this does not mean that he has a reason to do *anything* that improves his chances of victory. For example, if, following an audacious drop-shot, Scanlon's opponent would feel crushed to the point of suicide, this would give Scanlon a weighty – indeed, a normally decisive – reason not to play the shot, even if playing the shot were to improve his chances of victory. This is because the range of cases in which Scanlon need not be concerned by his opponent feeling crushed is constrained. Whilst Scanlon may be guided exclusively by what improves his chances of victory within a given range, he should treat other reasons as relevant outside of that range. The principle of liberal legitimacy is similarly constrained, and thus there may be cases when the presumption in its favour is defeated. See Scanlon, *What We Owe to Each Other*, 379, n. 34.

⁴⁵ See Rawls, *Political Liberalism*, 152; and Matthew Clayton and David Stevens, 'When God Commands Disobedience: Political Liberalism and Unreasonable Religions', *Res Publica*, 20 (2014), 265-84.

these constraints retains a particular character that requires justification none the less. This point is important as it reveals the way in which we can violate political autonomy through the use of means that do not reduce individuals' opportunities.⁴⁶

Anti-perfectionism has been attacked on many fronts. However, since this is a thesis about justice in work, it is not desirable for me to respond to each of these worries here. Perhaps, therefore, you may find my discussion of the demands of political morality, and in turn my rejection of labour perfectionism, to be too brief to be satisfactory. It is for this reason that it is better to characterise the liberal principle of legitimacy and the resulting anti-perfectionism as undefended premises of my investigation, rather than as conclusions that I establish.

Having said this, it may help for me to comment on, albeit not respond to, a particularly common objection: the *asymmetry objection*. It is helpful to consider this objection because it clarifies the structure of anti-perfectionism. The asymmetry objection claims that the liberal principle of legitimacy proves too much. This is because individuals disagree about more than the importance of meaningful work; they also disagree about almost all values, including political values, such as freedom and equality. This suggests that there are no public reasons and that, therefore, even when we use political power in seemingly just ways, such as to serve equality, say, some individuals will inevitably be subject to the exercise of political power that is justified

⁴⁶ Let me note that many exercises of political power that appear to be non-coercive do in fact involve coercion. Let's consider a policy that uses financial incentives to encourage individuals to become Christian. On the surface, this policy does not appear coercive, since it does not aim at reducing individuals' opportunities. However, this analysis ignores the fact that the financial incentives that we offer must be funded through the use of coercive taxation that does reduce individuals' opportunities. For further discussion, see Bernard Gert and Charles Culver, 'Paternalistic Behaviour', *Philosophy & Public Affairs*, 6 (1976), 45-57.

by appeal to reasons whose validity they reject. Doesn't the exercise of political power in these ways similarly violate political autonomy? To answer 'no' would seem to involve treating this case and the case of labour perfectionism asymmetrically.⁴⁷

A compelling response to the asymmetry objection must distinguish between two different kinds of disagreement. First, there are disagreements about the value of various ambitions. Second, there are disagreements about the value of various conceptions of justice. The asymmetry objection gets its force from the apparent symmetry between these two kinds of disagreement. In order to respond to this objection, anti-perfectionists must explain why these two kinds of disagreement differ. They must explain why we do not violate political autonomy when we justify political power on the basis of reasons *of justice* whose validity individuals reject, even though we do violate political autonomy when we justify political power on the basis of other reasons whose validity individuals reject. If we can sustain this conclusion, then anti-perfectionism can justify restricting the liberal principle of legitimacy to disagreements about the value of various ambitions alone. I do not attempt to take on this task.⁴⁸ I mention it only because it helps to illuminate further the content of anti-perfectionism.

⁴⁷ There are various versions of the asymmetry objection. See Michael Sandel, 'Review of Political Liberalism', *Harvard Law Review*, 107 (1994), 1765-94 at 1782-9; Stephen Mulhall and Adam Swift, *Liberals and Communitarians* (Oxford: Blackwell, 1992), 234; Simon Caney, 'Anti-Perfectionism and Rawlsian Liberalism', *Political Studies*, 43 (1995), 248-64 at 257-8; Jeremy Waldron, 'Disagreements About Justice', *Pacific Philosophical Quarterly*, 75 (1994), 372-87; and Timothy Fowler and Zofia Stemplowska, 'The Asymmetry Objection Rides Again: On the Nature and Significance of Justificatory Disagreement', *Journal of Applied Philosophy*, 32 (2015), 133-46.

⁴⁸ For replies to the asymmetry objection, see Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford: Oxford University Press, 2006), 19-27; Lecce, *Against Perfectionism*, chs 4 and 8; and Quong, *Liberalism without Perfection*, ch. 7.

My clarifications of the demands of political morality are important for two reasons. First, they highlight the reasons that we have to reject labour perfectionism, which is a historically dominant position within accounts of justice in work. Second, they are important because a commitment to anti-perfectionism informs other aspects of the investigation, including my account of occupational disadvantage and my claims about how to respond to this. In this respect, this section serves to clarify a further key premise of my project.

1.5 Work and Theories of Justice

In this section I address the relationship between the political principles that ought to guide society's arrangement and distribution of work and the political principles that ought to guide society's distribution of benefits and burdens more generally. To serve this end, I draw two distinctions: the distinction between generalism and non-generalism and the distinction between integrationism and isolationism.⁴⁹

The distinction between generalism and non-generalism concerns the grounds of our political principles. Generalists affirm that the political principles that ought to guide society's arrangement and distribution of work derive entirely from the more general political principles that ought to guide society's distribution of benefits and burdens. Non-generalists deny this. Non-generalists affirm that, in order plausibly to answer political questions about work, we must appeal, at least in part, to good-specific principles concerning work. On this view, the political principles that govern society's arrangement and distribution of work are in some sense *sui generis*, and thus work

⁴⁹ Throughout this section, I am indebted to Andrew Walton, 'Justice and Trade: An Argument for Holism', (unpublished manuscript).

generates its own *internal* political principles that either replace or supplement the political principles that generalists identify.

To illuminate the present disagreement, let's briefly consider a different case: the distribution of health.⁵⁰ One familiar position states that health is *special* such that we ought to be more averse to inequalities in its distribution than to inequalities in the distribution of other goods that are relevant to justice.⁵¹ One explanation for this is offered by those non-generalists who assert that there are *sui generis* political principles that apply to health. Ronald Dworkin offers an alternative, generalist analysis. He begins with a general inquiry into the political principles that ought to guide society's distribution of benefits and burdens, and then seeks to derive from this the political principles to guide the distribution of health.⁵² It is consistent with this position that we ought to be more averse to inequalities in the distribution of health than to inequalities in the distribution of other goods that are relevant to justice. What is crucial, though, is that the increased averseness must be explained by more general political principles.⁵³

The second distinction is between integrationism and isolationism.⁵⁴ It concerns the relationship between our different normative judgments. Integrationists state that we should analyse justice in work *in conjunction* with considerations about

⁵⁰ This example is discussed in Walton, 'Justice and Trade: An Argument for Holism'.

⁵¹ See Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge: Cambridge University Press, 2008); and Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 64-94.

⁵² Ronald Dworkin, 'Justice in the Distribution of Health Care', in Matthew Clayton and Andrew Williams (eds), *The Ideal of Equality* (Basingstoke: Macmillan Press, 2000b).

⁵³ For example, see Shlomi Segall, *Health, Luck, and Justice* (Princeton: Princeton University Press, 2010), ch. 6.

⁵⁴ I take these terms from Simon Caney, 'Just Emissions', *Philosophy & Public Affairs*, 40 (2012), 255-300 at 258-9.

what justice in general requires. Isolationists deny this claim. Isolationists affirm that we should respond to the requirement of justice in work *in isolation* from considerations about what justice demands in general.

To illuminate this disagreement, let's briefly return to the case of health but, this time, let's assume (for the sake of simplicity) that the political principles that guide the distribution of health dictate that we ought to secure an equal distribution of health. Do we have a reason to bring about an equal distribution of health if the only way in which we can achieve this is by re-directing the entire education budget towards healthcare? Isolationists claim that we do have such a reason. This is because isolationists believe that we should evaluate the distribution of health in isolation from other justice-relevant considerations. Integrationists deny this. For integrationists, our reason to protect an equal distribution of health is *contingent* upon the effects of doing so on other justice-relevant considerations. Since the costs are enormously high in this case, the integrationist can deny that we have any reason to bring about an equal distribution of health.

If we combine these two distinctions, we generate four possible approaches: (i) generalist and integrationist; (ii) generalist and isolationist; (iii) non-generalist and integrationist; and (iv) non-generalist and isolationist. It is not obvious that all of these views are intelligible. I favour the first option. This means that I defend an account of justice in work that is derived entirely from the political principles that ought to guide society's distribution of benefits and burdens more generally, and that is sensitive to considerations beyond those directly affecting work.

There are at least two reasons for preferring this approach. First, simplicity is a desideratum of a normative theory. As Shelly Kagan notes, it is a desirable feature of a normative theory that 'it yields a body of judgments out of a relatively sparse amount of theory, deriving the numerous complex variations of the phenomena from a small

number of basic principles'.⁵⁵ This consideration counts in favour of the generalist, integrationist approach only if we add the further assumption that the resulting analysis of society's arrangement and distribution of work can be as compelling as any alternative. I hope to establish that this is the case in the rest of this thesis.

Second, since I am concerned with what we ought to do 'all things considered', it is important to theorise about work in a way that is in principle sensitive to other relevant considerations. It is not plausible that our reasons regarding how to arrange and distribute work are insensitive to facts concerning that society's educational system, healthcare system, or the extensiveness of the welfare state, for example. It is perhaps this kind of thought that motivates Rawls to conclude that justice concerns 'the way in which the major social institutions *fit together into one system*'.⁵⁶

An upshot of my endorsement of a generalist, integrationist approach is that our account of justice in work must make explicit reference to the political principles and social institutions that ought to guide society's distribution of benefits and burdens more generally. I address further features of this approach in later chapters, but I hope that the contours of the approach are sufficiently clear now for us to proceed.

1.6 Preview of the Thesis

My investigation begins in chapter 2, where I offer a general discussion of how work can affect individuals' interests. Here, I distinguish between different kinds of interest, as well as between different ways in which various arrangements and distributions of work affect these interests. In doing so, I introduce terminology upon which I later

⁵⁵ Shelly Kagan, *The Limits of Morality* (Oxford: Clarendon Press, 1989), 11.

⁵⁶ Rawls, *Political Liberalism*, 258 [emphasis added].

rely, and I also illuminate some of the complexities to which an account of justice in work must be sensitive.

In chapter 3, I consider a Rawlsian account of justice in work, and I engage with the writings of Rawls and his defenders. Though this account correctly draws our attention to considerations to which any plausible account should be sensitive, I show that we should reject certain features of the view and, in any case, it is insufficiently fine-grained to be able to guide our evaluation of the social institutions that arrange and distribute work. In particular, though I show that we should accept some version of Rawls's principle of basic liberties, we must resist the principle of fair equality of opportunity, as well the difference principle. For this reason, we must develop an alternative approach that rivals and replaces certain features of the Rawlsian account.

I develop such an account in chapters 4 and 5, which are both strongly influenced by the political philosophy of Dworkin. In chapter 4, I refine Dworkin's views on the demands of equality in order to develop an attractive account of occupational (dis)advantage. In chapter 5, I then elaborate upon Dworkin's model of fair insurance, and then show it provides an attractive mechanism for theorising about the appropriate response to occupational disadvantage. In chapter 6, I consider the implications of my conclusions. In particular, I clarify the kind of job market intervention that we can justify by appeal to the framework that I develop. Given the liberal assumptions with which I begin, it is perhaps surprising that I defend measures that may be both intrusive and extensive. This conclusion may be even more surprising to those who mistakenly interpret Dworkin as a defender of 'the free market'.

In chapter 7, I analyse a slightly different question – namely, whether individuals are duty-bound to pursue socially beneficial occupations. My aim in this chapter is to offer a sophisticated account of individuals' duties in this realm that is sensitive to a range of ideals, including neglected ones, such as social unity. More

specifically, I accept that there may be duties of this kind, but also that there are many fewer of these duties than supposed by some theorists, such as G. A. Cohen and Stuart White.⁵⁷ This chapter is important as it affords me the opportunity to engage with questions relating to the nature and value of freedom of occupational choice.

In summary, my aim in this thesis is to make progress with developing an account of the political principles and social institutions that ought to guide society's arrangement and distribution of work. My contribution is distinctive in so far as it does this in a way that both takes seriously the liberal principle of legitimacy and the resulting commitment to anti-perfectionism, and does not inherit the flaws of Rawls's own theory.

Moreover, by operating in this way, I make two further distinctive contributions. First, I show how our concern for the liberal principle of legitimacy does not prevent us from recommending certain interventions in the job market. This is important, for it helps to defuse a worry that liberals who accept this principle are ill-equipped to offer compelling analysis of the job market. Second, I illustrate the versatility and merits of Dworkin's political philosophy, and I show how we can integrate it with parts of Rawls's political philosophy to develop an attractive hybrid. In doing so, this serves as a partial defence of Dworkin's views against a range of misinterpretations and objections.

⁵⁷ For example, see Cohen, *Rescuing Justice and Equality*, part 1; White, *The Civic Minimum*.

2 Interests at Work

Before I can make progress with developing an account of justice in work, it is first helpful to examine how various arrangements and distributions of work affect individuals' interests. This relationship is not a straightforward one. In this chapter, I shed light on some of its complexities and, in doing so, prepare the ground for the more thorough normative investigation that follows in subsequent chapters.

2.1 A Taxonomy of Interests

In order to provide some structure and clarity to this chapter, I begin by offering a taxonomy of work-related interests. There are two dimensions to this. First, I distinguish different types of interest based upon their *content* and, in particular, based upon how they relate to individuals' ambitions. Second, I distinguish different types of interest by their *role* and, in particular, how they are affected by various arrangements and distributions of work.

2.1.1 Content

To begin, I shall distinguish two kinds of interests: *ambition-based* interests and *ideal-based* interests. Ambition-based interests are interests that an individual has in virtue of her ambitions. More specifically, to say that an individual has an ambition-based interest in X is to say both that she has an interest in X, and that this is true at least in part because her ambitions bear the appropriate relation to X. For example, to say that Annabel has an ambition-based interest in becoming a professional darts player is to

say both that Annabel has an interest in becoming a professional darts player, and that this is true at least in part because her ambitions bear the appropriate relation to becoming a professional darts player. This would most obviously be the case if, following careful reflection, Annabel had formed the ambition to become a professional darts player.¹

We can explain the existence of ambition-based interests by reference to the importance of ‘subjective reactions’.² If an individual forms the ambition to work as an engineer, her positive subjective reaction to working as an engineer at least partially explains why she has an interest in that work. By contrast, if she forms the ambition to *avoid* working as an engineer, her negative subjective reaction to working as an engineer at least partially explains why she has an interest in *avoiding* that work.

It is significant that, in order for an individual to have an interest in X, it is not necessary that X is in fact objectively valuable to her. An individual can have an ambition-based interest in engineering, even if engineering is not at all valuable to her; she can also have an ambition-based interest in avoiding engineering, even if it would be highly valuable to her. This result may strike some readers as counter-intuitive and thus it is in need of further justification. After all, how can an individual have an interest in something that is in no way valuable to her? In reply, I shall make two closely related points. First, if we were to adopt the alternative position – that is, to grant an individual an interest in X only if X is objectively valuable to her – then we could not uphold the liberal principle of legitimacy. This is because we would have to attempt to resolve disputes amongst individuals about the value of their ambitions. In

¹ Ambition-based interests are the kind of interests that play a central role in desire-based accounts of well-being. For example, see Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), appendix I.

² Scanlon, *What We Owe to Each Other*, 42.

other words, this is the price we pay for the protecting both certain liberal rights and political autonomy. Second, as Rawls notes, individuals have a very weighty interest in being able to regard themselves ‘as self-authenticating sources of valid claims’, in the sense that they see themselves ‘as being entitled to make claims on their institutions so as to advance their conceptions of the good’.³ It is important that, when we exercise political power, we respect each individual’s capacity to set her own ambitions, even if those ambitions are in some sense mistaken. (There are exceptions to this, which I address below.)

Though necessary, the fact that X features in an individual’s ambitions is insufficient to generate an ambition-based interest in X. This is for at least three reasons.⁴ The first two of these reasons relate to how an individual’s ambitions are formed. In particular, it is necessary that the individual enjoys *ethical independence* and that her ambitions result from an appropriate degree of *critical deliberation*. When this is not the case, an individual may lack an ambition-based interest in X, even though it features in her ambitions.

To clarify, let me elaborate upon the ideas of ethical independence and critical deliberation. An individual enjoys ethical independence if she enjoys a certain degree of independence in the formation of her ambitions.⁵ We violate an individual’s ethical independence when we intentionally shape her ambitions through the exercise of certain kinds of power, including both political power and parental power.⁶ To see the

³ Rawls, *Political Liberalism*, 32.

⁴ For further treatment of these issues, see Scanlon, *What We Owe to Each Other*, 113-26.

⁵ Dworkin, *Justice for Hedgehogs*, 368-71; Raz, *The Morality of Freedom*, 377-8. For further discussion, see Matthew Clayton, ‘Is Ethical Independence Enough?’, (unpublished manuscript).

⁶ For discussion of the implications of the importance of ethical independence for the just exercise of parental power, see Matthew Clayton, ‘Independence for Children’, (unwritten manuscript).

force of this idea, let's consider a case in which, from a young age, both the government and her parents intentionally (and successfully) shape Beryl's beliefs so as to get her to form Christian ambitions. In these circumstances, we cannot say with confidence that Beryl has an ambition-based interest in pursuing a Christian life.

Critical deliberation requires of an individual that she forms her ambitions of the basis of some careful reflection about the reasons that apply to her. It thus requires that she takes seriously the importance of the task of forming her ambitions. This is a sufficientarian idea: what matters is that she engages in *enough* critical deliberation (which may not be very much), and not that her ambitions result from kind of critical deliberation practised only by philosophers. To illustrate this, let's consider the case of Cheryl who forms Christian ambitions arbitrarily, perhaps, say, as the result of a flip of a coin. Again, we cannot say with confidence that Cheryl has an ambition-based interest in pursuing a Christian life.⁷

The third reason that I shall discuss concerns the content, rather than formation, of an individual's ambitions. In particular, an individual cannot have an ambition-based interest in X if X does not pass a threshold of moral acceptability. To be sure, it is not merely that her ambition-based interest is diminished as a result of her ambition failing to meet the threshold of moral acceptability; rather, she has *no* interest

⁷ For further discussion of the relationship between critical deliberation and interests, see Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA.: Harvard University Press, 2000a), 248-9. It is worth noting that Dworkin makes a stronger claim than I need to make here. Whereas my claim about critical deliberation relates only to ambition-based interests, Dworkin makes the same claim about a wider set of interests. For critical discussion of Dworkin's stronger claim, see T. M. Wilkinson, 'Dworkin on Paternalism and Well-Being', *Oxford Journal of Legal Studies*, 16 (1996), 433-44; T. M. Wilkinson, 'Against Dworkin's Endorsement Constraint', *Utilitas*, 15 (2003), 175-93; and Richard Arneson, 'Defending the Bare Objective List Account of Well-Being', (unpublished manuscript).

in pursuing that ambition.⁸ In this sense, then, ambition-based interests are not entirely content-independent. To see this, let's consider the case of Dianne, who forms the ambition to become an assassin. It is intuitive to conclude not only that Dianne's victims lack an interest in Dianne becoming an assassin, but also that Dianne lacks an interest in becoming an assassin. This is because the ambition does not pass the threshold of moral acceptability. (I defend this claim more thoroughly in section 3.5.1.)

To summarise, an individual may lack an ambition-based interest in X even if X features appropriately in her ambitions, if she did not enjoy ethical independence when forming those ambition, if the ambitions are not the result of critical deliberation, or if the ambitions fail to pass the threshold of moral acceptability.

Having clarified the content and importance of ambition-based interests, I shall now turn my attention towards the idea of ideal-based interests. Ideal-based interests are interests that an individual has not in virtue of her ambitions. More specifically, to say that an individual has an ideal-based interest in X is to say both that she has an interest in X, and that this is true at least in part because X is a valuable ideal.⁹ For example, to say that Fiona has an ideal-based interest in becoming a philosopher is to

⁸ There are two possibilities here. The first states that an individual has no interest in ambitions that fail to pass the threshold of moral acceptability. The second states that an individual has an interest in not pursuing these kinds of ambitions, such that her life goes worse when she pursues them. The first view is consistent with Dworkin, *Sovereign Virtue*, 263-8. The second view is consistent with the account of the value of personal autonomy developed in Raz, *The Morality of Freedom*, 378-81. For further discussion, see Matthew Clayton and Andres Moles, 'Children, Morality, and Neurointerventions', (unpublished manuscript). For an alternative view, see Kasper Lippert-Rasmussen, 'Offensive Preferences, Snobbish Tastes, and Egalitarian Justice', *Journal of Social Philosophy*, 44 (2013), 439-58.

⁹ Here, I am concerned exclusively with *personal* ideals, which are ideals that have value *for someone*. We can distinguish this from *impersonal* ideals, which are ideals that have value *simpliciter*. Only personal ideals can generated the kind of ideal-based interests in which I am interested.

say both that Fiona has an interest in becoming a philosopher, and that this is true at least in part because becoming a philosopher is a valuable ideal. This might be the case if practising philosophy were itself a valuable ideal.¹⁰

Ideal-based interests are in one respect insensitive to ambitions. To claim that Fiona has an ideal-based interest in pursuing philosophy involves making a claim about the value of philosophy to Fiona. This claim may be true even if Fiona's ambitions to do not bear a close relationship to philosophy. This conclusion should not be surprising, for it simply takes seriously the possibility that Fiona may be mistaken about her interests. Importantly, however, there is another respect in which ambitions may continue to play some role. It is consistent with this that some ideal-based interests also require that absence, say, of certain ambitions. This may be the case with Fiona: Fiona has an ideal-based interest in becoming a philosopher, but only if she does not despise philosophy. The crucial point is that, though appropriate ambitions may be necessary for ideal-based interests, they do not help to explain the value of these interests.

We can further distinguish between two kinds of ideal-based interests. First, there are *political*-ideal-based interests. These are ideal-based interests whose subject matter is restricted to the domain of political citizenship. They refer to the interests that an individual has in virtue of having an interest in being a free and equal participant in a fair scheme of social cooperation.¹¹ I shall say more about these interests in the next chapter, when I discuss in detail Rawls's political philosophy.

¹⁰ Ideal-based interests are the kind of interests that play a central role in objective list accounts of well-being. For example, see Parfit, *Reasons and Persons*, appendix I; Arneson, 'Defending the Bare Objective List Account of Well-Being'.

¹¹ My account of political-ideal-based interests is less restrictive than others' accounts. For example, see Rawls, *Political Liberalism*, 11-15; and Quong, *Liberalism without Perfection*, 14.

Second, there are *comprehensive*-ideal-based interests. These are ideal-based interests whose subject matter is not restricted to the domain of political citizenship. Many people think of religious interests as a kind of comprehensive-ideal-based interest in this way.

The distinction between political-ideal-based interests and comprehensive-ideal-based interests is most significant to anti-perfectionists, who draw a similar distinction between disputes about ambitions and disputes about justice. To repeat, anti-perfectionists hold that, when justifying the exercise of political power, though we can appeal to controversial claims about justice, we ought not to appeal to controversial claims about the value of various ambitions. An implication of anti-perfectionism is that we ought not to assign a role to comprehensive-ideal-based interests in our account of justice in work. Since this chapter is concerned with mapping the territory rather developing such an account, however, I shall continue to take these interests into account for now.

Each of the three kinds of interests that I have identified requires a different type of justification. We must support ambition-based interests by appeal to arguments that refer to individuals' ambitions. We must support political-ideal-based interests by appeal to arguments that refer to the domain of political citizenship. And, we must support comprehensive-ideal-based interests by appeal to arguments that refer to claims about non-political values. It is for this reason that it is helpful to distinguish the different types of interest that are potentially relevant to an account of justice in work.

2.1.2 Role

Having distinguished different types of interest by their content, I shall now distinguish three different ways in which various arrangements and distributions of work can

affect an individual's interests. For simplicity, I shall refer to these as the three *roles* that work can play in affecting an individual's interests.

First, and most obviously, the quality of the work itself can directly affect an individual's interests. In the best case, work provides a vehicle through which an individual can advance her interests. In the worst case, work serves as an obstacle that can frustrate those interests. This thought, which is most closely associated with the Marxist tradition,¹² is a familiar and intuitive one. It reflects the often intimate connection between the quality of an individual's work and her interests.¹³ As White points out, even if the details are unclear, it is apparent that there is something lacking when an individual's 'Working life is, reductively, a burden to be borne, having no significance to her beyond the income it earns'.¹⁴ Put generally, this thought focuses our attention on the conditions under which the work itself is most valuable or disvaluable to the worker. I shall refer to these either as the benefits and burdens that are *internal* to work, or as the *internal* benefits and burdens of work.

One ideal that we might think is relevant to a discussion about the internal benefits of work is *self-realisation*. I shall say more about this idea below, in section 2.3. For now, let me simply note that there are two possible views about the relationship between self-realisation and the internal benefits of work. According to the first view,

¹² Marx, *Karl Marx*, 85-95. A more contemporary Marxist defence of this claim is offered in Jon Elster, 'Self-Realization in Work and Politics: The Marxist Conception of the Good Life', *Social Philosophy and Policy*, 3 (1986), 97-126 at 101-03.

¹³ Seana Shiffrin, 'Race, Labor, and the Fair Equality of Opportunity Principle', *Fordham Law Review*, 72 (2004), 1643-75 at 1666.

¹⁴ White, *The Civic Minimum*, 89. See also William Morris, *Signs of Change* (London: Longmans, Green, 1903), 141-73; and Paul Gomberg, 'Justice and Work', in Serena Olsaretti (ed.), *The Oxford Handbook of Distributive Justice* (Oxford: Oxford University Press, forthcoming).

an individual can attain the ideal of self-realisation only through certain arrangements of work. Perhaps an individual can attain the ideal of self-realisation only if her work affords creative opportunities, for example. According to the second view, it may be possible for an individual to attain the ideal of self-realisation outside of her working life, such that work is one sphere among many within which to achieve self-realisation. Of course, it is consistent with this that work remains a *privileged* sphere in which to achieve the ideal, whereby it is either less difficult or less costly to attain the ideal of self-realisation through work, than through other means. Perhaps this is because work typically involves a degree of compulsion that helps an individual to overcome her likely akrasia.¹⁵ Since it is implausible to claim that an individual cannot attain the ideal of self-realisation outside of work, the second view is more plausible than the first. It is important to bear this in mind, since it will later affect the details of our account of justice in work.

Let's turn now to the second role that work plays in affecting interests. This concerns the fact that work affects the extent to which an individual is able to pursue her ambitions outside of work – that is, in her free time. I shall refer to these either as the benefits and burdens that are *external* to work, or as the *external* benefits and burdens of work.

The paradigmatic example of an external benefit is the worker's wage. Other things equal, an individual who earns more is typically better able to advance her interests than an individual who earns less, since she has a greater supply of valuable resources available to her. Whilst the wage is the most obvious external benefit of work, it is not the only one. There are at least two further ways in which work can affect an individual's capacity to advance her interests outside of work. First, work

¹⁵ Elster, 'Self-Realization in Work and Politics'.

affects how much discretionary time an individual enjoys.¹⁶ Second, it affects an individual's mental and physical energy.¹⁷ Again, other things equal, an individual who enjoys more discretionary time and more mental and physical energy is typically better able to advance her interests than an individual who enjoys less discretionary time and less mental and physical energy. This is because discretionary time and mental and physical energy are resources that aid the advancement of many interests.

Finally, there is a third role that work plays in affecting an individual's interests. Whereas both the internal and the external benefits and burdens of work affect an individual, qua worker, this third role concerns how work affects an individual in ways independent of her role as a worker. For example, an individual may have an interest in arranging and distributing work so that it serves her interest in living in a productively efficient economy or living in a society that successfully equips every individual to discharge her duties of justice.¹⁸ I shall refer to these as *independent* benefits and burdens of work, so as to highlight the fact that these concern the interests that an individual has independently of her role as a worker.

2.1.3 Summary

I have distinguished between ambition-based interests, political-ideal-based interests, and comprehensive-ideal-based interests. I have also distinguished three roles: internal, external, and independent. This yields the following nine possibilities:

¹⁶ Julie Rose, 'Money Does Not Guarantee Time: Discretionary Time as a Distinct Object of Distributive Justice', *Journal of Political Philosophy*, 22 (2014), 438-57.

¹⁷ Arnold, 'The Difference Principle at Work'.

¹⁸ For example, see Martin O'Neill, 'Three Rawlsian Routes Towards Economic Democracy', *Revue de Philosophie Economique*, 9 (2008), 29-55.

	Content			
Role		Ambition- Based	Political-Ideal- Based	Comprehensive- Ideal-Based
	Internal	(1)	(2)	(3)
	External	(4)	(5)	(6)
	Independent	(7)	(8)	(9)

One way to proceed is systematically to work through the above table, considering the various interests that fall into each cell. This approach has the advantage of producing a comprehensive analysis of work-related interests. The disadvantage is that this would be tedious and too time-consuming. The alternative approach, which I pursue in the remainder of this chapter, is to consider a range of apparently weighty work-related interests, and use this taxonomy to clarify the types of claims upon which they rely, and the kind of evidence we need in order to support them. The advantage of this approach is that it allows me to spend much greater time discussing those work-related interests that look, initially at least, to be most significant to an account of justice in work.

2.2 Reflecting on the Empirical Data

In order to theorise about how various arrangements and distributions of work affect an individual's ambition-based interests, we must consult her ambitions. This is an empirical task. The problem is that, at least within liberal societies, there is no

consensus amongst individuals. What one individual finds intellectually satisfying, another individual finds intolerably difficult. What one individual finds monotonous, another individual finds soothing. This is further evidence in support of the disagreement claim, which I introduced in section 1.4.

Having said this, there are some ambitions, or at least properties of ambitions, whose value is fairly widely endorsed by the majority of individuals and, in some cases, by the vast majority of individuals. These properties are ones that are generally conducive to serving individuals' ambition-based interests, even if they do not always serve every individual's ambition-based interests. Again, this relies upon an empirical claim and, for this reason, we must support it by appeal to empirical research on worker attitudes. I shall draw upon an influential study carried out by Christopher Jencks, Lauri Perman, and Lee Rainwater.¹⁹ Their research is helpful for two reasons. First, it is expressly concerned with workers' attitudes towards different job characteristics. Second, the authors focus on those job characteristics that *on average* have a statistically-significant effect on workers' ratings of jobs. This is important for it helps us to identify those properties around which there is most consensus.

This source also has two drawbacks. First, it examines actual ambitions, rather than the ambitions that workers would have were they to have enjoyed ethical independence and were their ambitions to result from critical deliberation. Second, the study was conducted nearly thirty years' ago and it investigates the attitudes of workers in the United States only. We must take seriously the possibility that the data may reflect the ambitions of workers at a particular time and place only, and thus not be a reliable indicator of workers' ambitions more generally.

¹⁹ Christopher Jencks, Lauri Perman, and Lee Rainwater, 'What Is a Good Job? A New Measure of Labor-Market Success', *American Journal of Sociology*, 93 (1988), 1322-57.

Importantly, this argument does not prove that this study cannot be of any use to us. Rather, it simply prompts us to be cautious when extrapolating from the data. In particular, we ought not to take the information at face value, but instead treat workers' attitudes as a potentially unreliable proxy for what existing individuals would value were their ambitions formed in the right way. We should be prepared to overrule this study when we can offer a compelling explanation about its time- or context-specific nature or the way(s) in which its results reflect the absence of ethical independence or critical deliberation.

Jencks, Perman, and Rainwater identify fourteen job characteristics that on average have positive statistically significant effects on the way workers evaluate their jobs. These are: higher earnings; greater number of hours; more vacation weeks; more on-the-job training; less risk of job loss; greater complexity and variety;²⁰ lower proportion of repetition; doesn't involve getting dirty; greater working hours flexibility; less frequent supervisions; unionised contract; being a state employee; being a federal employee; and greater autonomy and a lack of bureaucratisation.²¹

The list of ambitions that Jencks, Perman, and Rainwater's study produces refers to both internal and external goods of work. Greater complexity and variety is an example of an internal good. Higher earnings is an example of an external good. Some ambitions, such as being a state or federal employee, are unclear. Perhaps they are proxies for otherwise unmeasured properties that workers generally value. Rather

²⁰ This is measured by the variable 'educational requirements', which is, according to the authors, 'presumably is a proxy for complexity, variety, and perhaps social status'. See Jencks, Perman, and Rainwater, 'What Is a Good Job?', 1338.

²¹ This is measured by the variable 'boss has a boss', which is, according to the authors, 'presumably is a proxy for lack of autonomy and bureaucratisation'. See Jencks, Perman, and Rainwater, 'What Is a Good Job?', 1338.

than elaborate on the contents of this list, whose importance in the most part should be self-evident, I shall instead move on to consider the ideal-based interests that are most relevant to work. (I return to these claims about ambition-based interests later in the thesis, when I construct an account of justice of work.) I focus my attention on ideal-based interests, since these require greater discussion than ambition-based interests. This is because, in order to justify them, we must provide philosophical arguments rather than empirical data.

2.3 The Ideal of Self-Realisation

In this section, I elaborate upon one particular comprehensive-ideal-based interest that refers to the familiar idea that each individual has a weighty interest in developing and exercising certain valuable capacities.²² Stipulatively, I call this the ideal of *self-realisation*.

2.3.1 What is Self-Realisation?

On the view that I adopt, an individual achieves self-realisation only if she develops and exercises certain valuable capacities. Stated in this way, the ideal is extremely vague, and one way in which we can make it more precise is to draw up a list of the capacities that an individual must develop and exercise in order to achieve self-realisation. Some proponents of the importance of self-realisation do this by reflecting upon ‘the most

²² For discussion of the importance of this ideal to accounts of justice in work, see Elster, ‘Self-Realization in Work and Politics’; Paul Gomberg, *How to Make Opportunity Equal: Race and Contributive Justice* (Malden, MA.: Blackwell, 2007); Rawls, *A Theory of Justice*, 372-80; Robert Taylor, ‘Self-Realization and the Priority of Fair Equality of Opportunity’, *Journal of Moral Philosophy*, 1 (2004), 333-47; and T. M. Wilkinson, *Freedom, Efficiency, and Equality* (Basingstoke: Palgrave MacMillan, 2000), 21-3.

distinctive or most cherished human capacities'.²³ They may include on their list the capacity to engage in a certain kind of work or to help meet the needs of others, as well as the capacity for love and friendship.

One worry with this approach is that it is overly prescriptive and, thus, is not sufficiently sensitive to the many differences between individuals. There are two problems here, which I shall illustrate by considering the example of Gina, who values playing cards alone. First, the present account of self-realisation underplays the extent to which Gina can achieve self-realisation through playing cards, even though she develops and exercises capacities that are in no way distinctive or (let's suppose) cherished by anyone other than Gina. Second, it overplays the extent to which Gina would achieve self-realisation through developing and exercising distinctive or cherished capacities, such as the capacity for friendship, that she does not value, and may even regard as burdensome.

It is better to favour a more ecumenical account of self-realisation that leaves open the capacities that an individual must develop and exercise in order to achieve self-realisation, and thus takes seriously the possibility that different individuals may need to develop and exercise different capacities in order to achieve self-realisation.²⁴ This move does not trivialise the ideal of self-realisation. Instead, it shifts the emphasis onto the *development and exercise* of certain capacities. We can characterise this in terms of the attainment of excellence.²⁵ An individual achieves self-realisation when she attains excellence, which I understand in terms of the full development and exercise of

²³ Muirhead, *Just Work*, 69. See also Elster, 'Self-Realization in Work and Politics'; Gomberg, *How to Make Opportunity Equal*.

²⁴ Richard Arneson, 'Equality of Opportunity: Derivative Not Fundamental', *Journal of Social Philosophy*, 44 (2013), 316-30 at 320.

²⁵ Gheaus and Herzog, 'The Good (and Bads) of Work'.

certain capacities. An attractive feature of this conception of self-realisation is that, because it is less prescriptive than the previous account, it is capable of explaining the self-realisation that Gina achieves when she plays cards excellently.

Significantly, on at least one interpretation of his work, Rawls is sympathetic to some of these claims about the importance of self-realisation. This is suggested by his discussion of the *Aristotelian Principle*, where he writes:

The Aristotelian Principle states that, other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and that this enjoyment increases the more their capacity is realized, or the greater its complexity. A person takes pleasure in doing something as he becomes more proficient at it, and of two activities which he performs equally well, he prefers the one that calls upon the greater number of more subtle and intricate discriminations. Thus the desire to carry out the larger pattern of ends which brings into play the more finely developed talents is an aspect of the Aristotelian Principle.²⁶

Though Rawls does not use the word ‘excellence’, this idea underpins his convictions regarding the importance of an individual developing and exercising certain capacities.

However, on an alternative interpretation of Rawls, an individual’s interest in self-realisation is simply an ambition-based interest, rather than a comprehensive-ideal-based interest. Here, it is noteworthy that Rawls describes the Aristotelian Principle as a ‘principle of motivation’ or, more specifically, a ‘psychological law’.²⁷ On this view,

²⁶ Rawls, *A Theory of Justice*, 364. For terminological reasons, Rawls resists using the label ‘self-realisation’ to refer to this idea. See Rawls, *A Theory of Justice*, 378.

²⁷ Rawls, *A Theory of Justice*, 375. Also, see Samuel Freeman, *Rawls* (New York: Routledge, 2007), 463. Empirical data also supports this claim. See Jencks, Perman, and Rainwater, ‘What Is a Good Job?’, 1338; and Daniel Pink, *Drive: The Surprising Truth About What Motivates Us* (Edinburgh: Canongate, 2010), ch. 5.

we can explain the appeal of self-realisation entirely by referring to how it features in individuals' own ambitions. For my purposes, it does not matter which interpretation of the Aristotelian Principle is accurate. The salient point is that there are two ways in which to justify a concern for self-realisation. Given that I dealt with ambition-based interests in the previous section, I shall here focus on the interest in self-realisation as a comprehensive-ideal-based interest.

2.3.2 Self-Realisation and Potential

I shall now comment on a second dimension of the ideal of self-realisation, which relates to the fact that it is most plausibly understood as involving a claim about an individual's interest in realising her potential.²⁸ On this view, we should measure an individual's level of self-realisation not in absolute terms, but in terms relative to her potential. To illustrate this point, let's consider the following case:

Potential: Heidi and Indra are both philosophers. Whereas Heidi has the potential to be a great philosopher, Indra could be only a good philosopher. Importantly, though, whereas Heidi lacks opportunities to interact with other philosophers from whom she might learn, Indra regularly interacts with and learns from many great philosophers. If they were to debate, Heidi would convince Indra, but not vice versa. However, Indra realises her philosophical potential to a greater extent than Heidi realises her potential.

In terms of achievement *simpliciter*, Heidi achieves more than Indra. But, Indra achieves more than Heidi, if we measure their achievement in a way that is sensitive to their respective potential. If we integrate the second strategy in our account of self-

²⁸ Throughout this subsection, I follow Matthew Clayton, 'Equality and the Realization of Potential', (unpublished manuscript).

realisation, and thus accommodate judgments sensitive to potential, we make room for the possibility that Indra is closer to the ideal of self-realisation than Heidi. I take it that, at least under some conditions, this is an intuitively appealing result.

In order to provide a complete account of this idea, it would be necessary to specify how best to understand ‘potential’. Should we follow Peter Vallentyne and define an individual’s potential in terms of what is ‘left open by the laws of nature given the state of the world’?²⁹ Or, should we define it more restrictedly, perhaps in a way that takes seriously the limited resources that are available to us?³⁰ My aim is not to resolve this dispute. Instead, I mention it merely to flag up its relevance to a complete account of the ideal of self-realisation.

2.3.3 Self-Realisation and Work

Having started to clarify the ideal of self-realisation, we now turn to the relationship between self-realisation and work. As I noted in section 2.1.2, several views are possible. The most plausible of these states that, though work is a privileged sphere in which to achieve self-realisation, it is not the only sphere.

This position is attractive for several reasons. First, it takes seriously the intimate connection between self-realisation and work. This relationship is intimate for three reasons. First, given certain assumptions about human psychology, individuals are less likely to continue to make the effort necessary for attaining self-realisation without the kind of compulsion that work provides.³¹ On this view, work

²⁹ Peter Vallentyne, ‘Of Mice and Men’, in Nils Holtug and Kasper Lippert-Rasmussen (eds), *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford: Clarendon Press, 2007), 225.

³⁰ Clayton, ‘Equality and the Realization of Potential’.

³¹ Elster, ‘Self-Realization in Work and Politics’, 98.

can serve as a commitment strategy that aids the achievement of self-realisation. Moreover, this claim can be strengthened by drawing upon empirical findings that show a strong correlation between frequent or long-term unemployment and a lack of motivation.³²

Second, for many individuals, work is a time-intensive activity that leaves them with little discretionary time.³³ It is very difficult for an individual to achieve self-realisation outside of work simply because work either takes up too much of her time or she may be forced to work unsociable hours, say, at evenings and at weekends.³⁴ Indeed, as Bertrand Russell notes, ‘without a considerable amount of leisure a man is cut off from many of the best things’.³⁵ The achievement of self-realisation outside of work is one of these things.

Third, for many individuals, work is physically intensive but mentally unengaging. Physical intensity is important because an individual with a physically demanding job may lack the physical energy necessary to achieve self-realisation outside of work. Mental engagement is important for the opposite reasons. As Adam Smith famously points out:

the understandings of the greater part of men are necessarily formed by their ordinary employments. The man whose whole life is spend in performing a few simple operations...has no occasion to exert his understand....He naturally loses,

³² A classic study in this area is Marie Jahoda, *Employment and Unemployment: A Social-Psychological Analysis* (Cambridge: Cambridge University Press, 1982).

³³ Rose, ‘Money Does Not Guarantee Time’.

³⁴ Rawls briefly considers the relevance of discretionary time to justice in John Rawls, ‘Reply to Alexander and Musgrave’, *The Quarterly Journal of Economics*, 88 (1974), 633-55 at 654; and Rawls, *Justice as Fairness*, 179.

³⁵ Bertrand Russell, *In Praise of Idleness and Other Essays* (Oxford: Routledge, 2006 [1932]), 8.

therefore, the habit of such exertion, and generally becomes as stupid and ignorant as it is possible for a human creature to become.³⁶

Smith is concerned with the fact that certain arrangements of work tend consistently to deprive individuals of the mental resources to be able to attain valuable ideals, including self-realisation. Moreover, empirical evidence confirms Smith's speculation. For example, Melvin Kohn and Carmi Schooler document how certain arrangements of work affect workers' cognitive capacities. In particular, they draw attention to the importance of complexity. They write: 'substantive complexity actually does have a causal impact on...psychological functioning'.³⁷ The same conclusion is central to much of the work of Samuel Arnold, who similarly notes that the execution of simple repetitive tasks tends to lead to the deterioration of workers' cognitive capacities.³⁸

Whilst these three points help to show how work is a privileged sphere in which to achieve self-realisation, they do not show that work is the only sphere in which to achieve self-realisation. Regarding the importance of compulsion, there are two points in support of this more modest conclusion. First, even if a degree of compulsion were necessary for self-realisation, it is clear that other means can also provide this. For example, let's consider the case of parenting. Many individuals structure much of their lives around the project of parenting, and parents are arguably capable of achieving self-realisation through this activity.³⁹ Though good parenting

³⁶ Adam Smith, *An Inquiry into the Nature and the Causes of the Wealth of Nations*, eds R. H. Campbell and A. S. Skinner (Indianapolis: Liberty Classics, 1981 [1776]), 782.

³⁷ Melvin Kohn and Carmi Schooler, *Work and Personality: An Inquiry into the Impact of Social Stratification* (Norwood, NJ: Ablex Publishing, 1983), 124.

³⁸ Arnold, 'The Difference Principle at Work', 102.

³⁹ For example, see Harry Brighouse and Adam Swift, 'Parents' Rights and the Value of the Family', *Ethics*, 117 (2006), 80-108.

requires considerable continued effort, the nature of the task is such that it is not psychologically implausible to expect parents to maintain this standard. After all, for most parents, crying children provide all the compulsion that one needs!⁴⁰ A similar example is provided by those who take up a sport or game as a hobby. In my experience, an individual's concern not to let down her darts team or regular practice partner can similarly provide the necessary compulsion to make a continued effort psychologically plausible.

Second, we should be sceptical of the claim that individuals generally lack the psychological capacity to achieve self-realisation without any compulsion. Whilst the empirical evidence shows a strong correlation between frequent or long-term unemployment and a lack of motivation, we can explain this by appealing to other factors. More specifically, those who experience frequent or long-term unemployment are often the recipients of negative public attitudes, and this may jeopardise an individual's capacity to maintain the level of effort necessary for self-realisation.⁴¹ The consequence of this is that it may be equally possible for an individual to achieve self-realisation outside of work simply by adopting less persecuting negative public attitudes towards those in frequent or long-term unemployment.⁴²

⁴⁰ This is not to say that society's arrangement and distribution of work is always conducive to individuals attaining this ideal through their parenting. As Harry Brighouse and Adam Swift point out: 'Professional and nonprofessional jobs, especially in the United States, frequently lack the kind of employment protection that enables parents to negotiate their hours of work to fit with the demands of parenting, and jobs are often structured in such a way that wholehearted involvement in them is strongly in tension with wholehearted involvement in family life'. See Brighouse and Swift, 'Parents' Rights and the Value of the Family', 106-07.

⁴¹ See Rawls, *A Theory of Justice*, 386. For further discussion, see Nanna Kildal, 'The Social Bases of Self-Respect: A Normative Discussion of Politics against Unemployment', *Thesis Eleven*, 54 (1998), 63-77.

⁴² Arneson, 'Is Work Special?', 1133.

Similarly, it is important not to overstate the time-intensive nature of work, nor the fact that it can be physically intensive but mentally unengaging. The salient point is that these are contingent facts. Whilst we can arrange and distribute work so that it is time-intensive, physically intensive, and mentally unengaging – and, indeed, we currently do – we could do otherwise. It is possible to arrange and to distribute work alternatively, so that it does not leave an individual insufficient time and energy for her to achieve self-realisation outside of work. Along these lines, we might be tempted to conclude that the very fact that work is a privileged sphere in which to achieve self-realisation is itself a regrettable one that we have weighty reasons to change. These ideas are familiar from the literature on work-family balance and they are ones that I shall explore later in this thesis.

To summarise, these arguments show that an individual can achieve self-realisation outside of work. Moreover, in so far as an individual's work affects her capacity to attain this ideal, these considerations should enter our account of justice in work as part of work's external benefits and burdens. Again, the example of parenting may prove instructive here, since it is both an activity through which an individual can achieve self-realisation, and an activity whose pursuit is affected by the parent's work. An individual's ability to achieve self-realisation through her parenting can be affected by having to work long or unsociable hours, or having to take on work that leaves her physically exhausted or mentally ill-equipped to parent well.⁴³

To conclude, let me comment on the relationship between individuals' comprehensive-ideal-based interest in self-realisation and their ambition-based

⁴³ For a discussion of how various arrangements and distributions of work affect individuals' ability to care for others, including their family, see Brighouse and Swift, 'Parents' Rights and the Value of the Family'; Daniel Engster, *The Heart of Justice* (Oxford: Oxford University Press, 2007); and Serena Olsaretti, 'Children as Public Goods?', *Philosophy & Public Affairs*, 41 (2013), 226-58 at 229.

interests. In particular, we should note that it is possible that, in addition to her comprehensive-ideal-based interest, an individual may have a very similar ambition-based interest in self-realisation. This could be for two reasons. First, she may have the ambition to achieve self-realisation. When this is the case, we should plug into an individual's ambition-based interests the account of self-realisation that I have developed. Second, she may have the ambition to develop and exercise those capacities that, as it happens, will constitute self-realisation for her. I suspect that only very few individuals have such philosophically nuanced ambitions and, because of this, it is unlikely that her ambition-based interests will neatly track the ideal of self-realisation, as I have described it. However, though there will be some divergence, there may remain plenty of overlap. Moreover, the study by Jencks, Perman, and Rainwater supports this empirical conjecture. They note that workers tend to value more on-the-job training, greater complexity and variety, lower proportion of repetition, and greater autonomy – all of which plausibly serve an individual's comprehensive-ideal-based interest in self-realisation.⁴⁴ Finally, since this is the case, we are entitled similarly to conclude that work is a privileged sphere in which to pursue at least some ambition-based interests, namely those relating to (something close to) self-realisation.

2.4 Self-Respect

A second ideal that is relevant to normative discussions about work is self-respect. Throughout, I utilise a functional definition of self-respect, whereby an individual enjoys self-respect only if she has a sufficient level of confidence in her own convictions such that, amongst other things, she is able to have, to revise, and

⁴⁴ Jencks, Perman, and Rainwater, 'What Is a Good Job?', 1338.

rationally to pursue her own ambitions.⁴⁵ Self-respect is a political-ideal-based interest. It is an interest that is intimately tied to the ideal of political citizenship and, in particular, it is an interest that an individual has in virtue of having an interest in being a free and equal participant in a fair scheme of social cooperation.

2.4.1 The Social Bases of Self-Respect

Self-respect is a psychological phenomenon. An individual enjoys self-respect only if, as a psychological matter, she enjoys sufficient confidence in her convictions to be able to have, to revise, and rationally to pursue her own ambitions. In an important sense, therefore, it is irrelevant whether or not an individual *feels* as if her self-respect is being denied. Two cases illustrate this point. First, an individual may lack sufficient confidence in her convictions but not realize it. Second, she may believe that she lacks sufficient confidence in her convictions without this in fact being the case.

The demandingness of self-respect depends greatly upon empirical information regarding how certain factors affect individuals' self-confidence. It is plausible that a key determinant of an individual's self-respect is the attitude of those with whom she interacts, including her friends, family, co-workers, employers, and customers, for example. Indeed, as Rawls notes 'unless our endeavors are appreciated by our associates it is impossible for us to maintain the conviction that they are worthwhile'.⁴⁶ Rawls further supports this by adding that the appreciation of others tends 'to reduce the likelihood of failure and...provide support against the sense of self-doubt when mishaps occur'.⁴⁷ This is why stigmatisation is so damaging to self-respect.

⁴⁵ Rawls, *A Theory of Justice*, 386.

⁴⁶ Ibid., 387.

⁴⁷ Ibid., 441.

These ideas are related to, but distinct from, claims about prejudice. An individual is a victim of prejudice if she is a victim of treatment motivated by the belief that she has less than equal moral worth. Very often, prejudice leads to stigmatisation such that it damages the self-respect of the victim. This is most obviously true of many kinds of racist or sexist prejudice. But, this need not always be the case. An individual may be a victim of prejudice but she may be otherwise entirely unaffected by this; she may even be unaware of others' beliefs. When this is the case, the prejudice does not damage her self-respect, and so cannot be unjust for these reasons. To be sure, this is not to say that such prejudice is not unjust; it is unjust.⁴⁸ The simple point is that it is unjust for reasons unrelated to self-respect. It is in one way easier to theorise about prejudice than it is to theorise about stigma. We ought simply to stamp out prejudice and, providing we have in place a decent education system, we can expect of each individual that she believe in the equal moral worth of all individuals.⁴⁹ Stigmatisation is much more complicated.

One apparently obvious way in which to protect the interest in self-respect is to assert that every individual is entitled to appreciation of her endeavours from others. A problem with this move is that it would be self-defeating, since an individual's self-respect relies upon others' appreciation being genuine rather than artificial in the sense described. If an individual knows that others appreciate her endeavours only because they are duty-bound to do so, the appreciation is unlikely to have the psychological effect necessary for securing self-respect. For this reason, we must develop an alternative approach.

⁴⁸ I defend this conviction more fully in Adam Slavny and Tom Parr, 'Harmless Discrimination', *Legal Theory* (forthcoming).

⁴⁹ For further discussion of the appropriate response to prejudice, see Daniel Halliday, 'Inheritance and Hypothetical Insurance', (unpublished manuscript).

Instead, we can focus on the variety of political and social factors that are conducive to securing self-respect. Again, Rawls makes this move, when he refers to the *social bases of self-respect*.⁵⁰ My aim in the remainder of this section is to elaborate on this idea and to highlight areas that are of specific relevance to an account of justice in work.

2.4.2 Self-Respect and Work

Commenting on the relationship between the social bases of self-respect and work in particular, Gerald Doppelt notes that ‘Social research concerning work strongly suggests that the injuries to self-respect in the labor process partly stems from the self-stultification implicit in its most powerless positions’.⁵¹ By this, Doppelt means to refer both to the fact that many workers feel that they are treated as if they are not responsible agents – as if they are mere cogs in a machine, so to speak – and to the fact that many workers then internalise this message, which jeopardises their self-respect. Sociologists and psychologists highlight a number of properties of various arrangements of work that predictably have this deleterious effect on workers’ self-respect. Rather than survey this literature, I shall instead mention and clarify only two of these properties, both of which relate to inequalitarian social relationships.⁵²

⁵⁰ Rawls, *A Theory of Justice*, 478.

⁵¹ Gerald Doppelt, ‘Rawls’ System of Justice: A Critique from the Left’, *Noûs*, 15 (1981), 259-307 at 273.

⁵² For summaries, see Gomberg, ‘Justice and Work’; Hsieh, ‘Justice in Production’. For further analysis, see Melvin L. Kohn and Carmi Schooler, ‘The Reciprocal Effects of the Substantive Complexity of Work and Intellectual Flexibility: A Longitudinal Assessment’, *American Journal of Sociology*, 84 (1978), 24-52; Kohn and Schooler, *Work and Personality*, esp. 204-07; and Arthur Kornhauser, *Mental Health of the Industrial Work* (New York: John Wiley and Sons, 1965).

First, let's consider an arrangement in which a worker enjoys to a much lesser extent than others the capacity to exert control over her own working life, as well as the working lives of colleagues. The resulting social relationships between this worker and her colleagues are inequalitarian in the sense that there is an unequal distribution of the capacity to control others' lives. Inequalities of this kind are significant because, as Rawls points out, they tend to produce 'deference and servility on one side and a will to dominate and arrogance on the other'.⁵³ At least under certain conditions, this deference and servility may be great enough to undermine an individual's confidence in her convictions to such a degree that it threatens her self-respect.

Second, let's consider an arrangement in which an individual feels stigmatised. This involves an inequalitarian relationship in so far as she feels looked down upon by others. One possibility is that this arrangement is one of the principal purposes of some kinds of work. Indeed, Muirhead claims that it may even be the *sole* purpose of some forms of work, including, for example, some instances of the wealthy's employment of domestic servants.⁵⁴ Whilst it is not plausible that this is ever the sole purpose of this kind of employment, Muirhead is no doubt correct to allude to the fact that it may be one of the main purposes of some forms of work. To be sure, the point is not (only) that the wealthy employ domestic servants in part because it gives them the opportunity to look down on their servants. Rather, there is the further idea that, by employing these servants, the wealthy are able to uphold a wider social hierarchy that enables them to look down upon others in a more general way.

⁵³ Rawls, *Justice as Fairness*, 131. See also Hsieh, 'Justice in Production', 91-2. For a more general discussion of what is objectionable about inequalities in the distribution of control over others' lives, see T. M. Scanlon, *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge: Cambridge University Press, 2003), 202-18.

⁵⁴ Muirhead, *Just Work*, 34.

A second possibility is that, though the work provides an opportunity for others to look down upon an individual, this is not the purpose of the work. Perhaps this is the case with dirty work. Despite often carrying out socially important tasks, workers who perform dirty work are often stigmatised by members of their society.⁵⁵ Though, in some cases, this stigma results from displays of prejudice, in many cases it does not. It most often results from the fact that these workers feel as if others do not appreciate their efforts.⁵⁶ As I noted above, stigmatisation of this kind is a clear threat to self-respect.

It is important for us to keep apart the different ways in which various arrangements of work threaten self-respect. This is because the appropriate responses to each of these differ. The obvious response to an unequal distribution of the capacity to control others' lives may be to intervene so as to ensure that workplace relationships do not possess this property. I examine and defend this claim in detail in the next chapter. The obvious response to arrangements of work that involve stigmatisation is to try to shape public culture, through the use of civic education, say, so as to minimise the likelihood of stigmatisation. As Richard Arneson notes, the stigmatisation that many workers suffer is a result of 'cultural beliefs that could be changed and perhaps ought to be changed...perhaps an egalitarian norm ought to reject this way of thinking'.⁵⁷ Moreover, depending upon how time-intensive, physically intensive, and mentally unengaging her work is, an individual may also be able to achieve self-respect

⁵⁵ Walzer, *Spheres of Justice*, 175-8. In his study of different kinds of dirty work, Stephen Ackroyd notes that exposure to dirt is not sufficient for stigmatisation. Stigmatisation typically occurs 'only by handling large amounts of dirt and/or potent pollutants'. See Stephen Ackroyd, 'Dirt, Work and Dignity', in Sharon Bolton (ed.), *Dimensions of Dignity at Work* (Oxford: Butterworth-Heinemann, 2007), 31.

⁵⁶ Ackroyd, 'Dimensions of Dignity at Work'.

⁵⁷ Arneson, 'Is Work Special?' , 1133.

through her pursuits outside of work, providing that others are willing to recognise these pursuits. As Arneson again points out:

there are ways to gain self-esteem other than job performance. Individuals can be dedicated to pursuing avocations, cultivating friendships, carrying out duties of family life in exemplary fashion, attaining some virtue or recognized excellence of achievement, or working in free time for a cause one respects. Any of these and many other projects can be sources of self-esteem obtainable independently of the quality of one's employment and on-the-job experiences.⁵⁸

By 'self-esteem', Arneson has in mind what I call 'self-respect'.⁵⁹

Importantly, these suggestions are not vulnerable to the objection that they are self-defeating. The present response does not utilise a duty to recognise these pursuits; rather, it states that we must shape the political and social environment so as to increase the likelihood that individuals themselves recognise the value in others' pursuits. The appreciation that an individual feels from others is, therefore, more likely to be experienced as genuine in the relevant sense.

A more threatening objection claims that these suggestions are sociologically naïve. As a sociological fact, perhaps it is not possible – or, at least, it is very difficult – to change public culture without greater reform of society's economic institutions.⁶⁰ Though potentially forceful, I shall not address this objection here. This is for two reasons. First, it would require too great a departure from the present set of issues.⁶¹

⁵⁸ Ibid., 1132.

⁵⁹ Ibid., 1146, n. 8.

⁶⁰ This idea is defended thoroughly in G. A. Cohen, *Karl Marx's Theory of History: A Defence* (Oxford: Clarendon Press, 1978).

⁶¹ For a rejection of one of the premises on which this objection is based, see Paula Casal, 'Marx, Rawls, Cohen, and Feminism', *Hypatia* (forthcoming).

Second, my aim in this section – and, indeed, in this chapter – is not to defend in any particular view about how to arrange and to distribute work. My aim is more modest than this. It is simply to draw attention to various questions that any complete account of justice in work must answer, thereby laying the foundations for further inquiry.

2.5 Other Considerations

In previous sections, I focused on the internal and external benefits and burdens of work. In this section, I turn my attention towards its independent benefits and burdens. To repeat, these concern the interests that an individual has independently of her role as a worker. Again, rather than summarise the various possibilities, I shall concentrate on only two: (i) an individual's interest in living in a productively efficiency economy, and (ii) an individual's interest in living in a thriving democracy.

2.5.1 Efficiency

Certainly, individuals have an interest in living in a society whose economy is productively efficient, at least to some extent. Most obviously, every individual has a very weighty interest in living in a society whose economic institutions are arranged such that there is sufficient wealth to guarantee for her a decent social minimum when she enjoys her just entitlements. A consequence of this is that she has very weighty reasons to prefer arrangements and distributions of work that deliver this result.

Despite this, we should resist the conclusion that an individual retains an interest in living in a productively efficiency economy once we have met this threshold. In other words, above a given level, we may have reasons to prefer *steady state economies*. J. S. Mill's defence of the steady state economy begins as follows:

the best state for human nature is that in which, while no one is poor, no one desires to be richer, nor has any reason to fear being thrust back by the efforts of others to push themselves forward... I know not why it should be a matter of congratulation that persons who are already richer than anyone needs to be, should have doubled their means of consuming things which give little or no pleasure except as representative of wealth.⁶²

Announcing his support of this idea, Rawls states that no reasonable conception of justice could be committed to the maximisation of wealth, and that ‘We should not rule out Mill’s idea of a society in a just stationary state where (real) capital accumulation may cease’.⁶³

Our reasons for accepting this conclusion are negative. In particular, it is not clear why we should aim at wealth maximisation, especially when so few individuals pursue such a goal in their own lives.⁶⁴ Moreover, perhaps even fewer individuals would pursue wealth maximisation if everyone enjoyed ethical independence that did not have their ambitions unjustly shaped by parents, schools, and the media. However, this is just speculation. Of course, there is much more to say about the advantages and disadvantages of aiming at wealth maximisation. I take up some of these complications in later chapters. For now, it is enough simply to draw attention to the importance of these considerations to our account of justice in work.

⁶² J. S. Mill, *Principles of Political Economy*, ed. Jonathan Riley (Oxford: Oxford University Press, 1994 [1848]), 127.

⁶³ Rawls, *Justice as Fairness*, 63. There are further complications here, particularly because it is not clear how these claims cohere with Rawls’s views on distributive justice. For discussion of these complications, see Andrew Williams, ‘Linguistic Protectionism and Wealth Maximisation’, in Axel Gosseries and Yannick Vanderborght (eds), *Arguing About Justice: Essays for Philippe Van Parijs* (Louvain: Presses Universitaires de Louvain, 2011).

⁶⁴ Williams, ‘Linguistic Protectionism and Wealth Maximisation’, 401.

2.5.2 Democracy

There is a considerable academic literature that draws upon insights from political sociology to examine how various arrangements of work affect a society's democratic credentials.⁶⁵ Clearly, if there is a link between these two, and if an individual does have an interest in living in a thriving democracy, then this will register as an independent interest to which our account of justice in work should be sensitive. In this vein, and following Mill,⁶⁶ Martin O'Neill writes:

it is plausible to think that, unless individuals have some first-hand experience in the deliberative direction of some collective enterprise (such as a firm), then they will lack the skills that will be needed in order to participate fully in “the free use of public reason” in democratic politics. The idea here is that participation in more local and partial forms of democratic deliberation is a necessary precondition for full and effective participation in democratic deliberation at the national level.⁶⁷

⁶⁵ There are too many contributions to mention. Selected almost at random, examples include Robert Dahl, *After the Revolution? Authority in a Good Society* (New Haven: Yale University Press, 1970); Joshua Cohen, ‘The Economic Basis of Deliberative Democracy’, *Social Philosophy and Policy*, 6 (1989), 25-50; Waheed Hussain, ‘Nurturing the Sense of Justice: The Rawlsian Argument for Democratic Corporatism’, in Martin O'Neill and Thad Williamson (eds), *Property-Owning Democracy: Rawls and Beyond* (Malden, MA.: Blackwell, 2012); and Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 2000).

⁶⁶ Mill, *Principles of Political Economy*. See also Helen McCabe, “Under the General Designation of Socialist”: The Many-Sided-Radicalism of John Stuart Mill’, (University of Oxford: DPhil Thesis, 2010), 162-9.

⁶⁷ Martin O'Neill, ‘Three Rawlsian Routes Towards Economic Democracy’, *Revue de Philosophie Economique*, 9 (2008), 29-55 at 35.

The present argument aims to provide a justification for workplace democracies and, at least, greater democratic provisions at work. I examine this argument in some detail in the next chapter. For now, my aim is simply to report this argument and, in doing so, to lay the foundations for the more thorough normative investigation that follows.

Of course, in reporting this justification of workplace democracy, I do not mean to imply that it is the only justification that can, or has been, given. On the contrary, advocates have provided a large range of arguments in support of workplace democracy, and only a small number of these rely upon claims about the importance of living in a thriving democracy. Others rely upon claims about domination, about the quality of individuals' working lives, and about the alleged similarity between the state-citizen relationship and the employer-employee relationship, for example.⁶⁸ For the most part, I do not address these arguments in this thesis. This is because, doing so adequately, would leave me insufficient space to address a wide range of other questions that have received less philosophical attention.

2.6 The Means Principle

To conclude this survey, I shall consider a very different kind of interest that individuals share. To highlight this interest, we can consider the following case:

Conscription: Jackie decides that she would like to spend the next year of her life working as a baker. The state then conscripts Jackie to work as a baker, with the threat of severe punishment if she violates this restriction.⁶⁹

⁶⁸ For a number of these kinds of arguments, see Ruth Yeoman, *Meaningful Work and Workplace Democracy: A Philosophy of Work and A Politics of Meaningfulness* (Basingstoke: Palgrave MacMillan, 2014).

⁶⁹ This example is adapted from Amartya Sen, *The Idea of Justice* (Cambridge, MA.: Harvard University Press, 2009), 229.

It could be that Jackie benefits from the policy that the state pursues. Perhaps Jackie's ambition-based interest in becoming a baker is better protected in *Conscription* than in any alternative. Perhaps this is also true of her comprehensive-ideal-based interest in self-realisation. To be sure, given both epistemic and practical difficulties, neither of these outcomes is likely. None the less, the outcome remains possible. This case is important because it helps to show us how, even though the policy advances certain interests, this is insufficient to justify it. Despite benefiting her, Jackie retains a complaint against the policy.

In response, we might note how the force of the case may trade upon an ambiguity. In particular, it is not clear whether Jackie's ambition is (i) simply to work as a baker, or (ii) to work as an unscripted baker. I take it that many individuals attach some value to being unscripted, and so this provides some theoretical resources to respond to the problems that this case raises. None the less, this response is not fully satisfactory. There would remain something morally objectionable about the policy pursued in *Conscription*, even if Jackie were indifferent to being conscripted.

There are several ways in which to explain this.⁷⁰ One promising route appeals to individuals' interest in not being used by others as a mere means, where this occurs when one is intentionally co-opted into the plans of another individual.⁷¹ Every

⁷⁰ For example, see T. M. Scanlon, 'The Significance of Choice', in S. M. McMurrin (ed.), *The Tanner Lectures on Human values Vol. 8* (Cambridge: Cambridge University Press, 1988), 149-216. For further discussion, see Andrew Williams, 'Liberty, Liability, and Contractualism', in Nils Holtug and Kasper Lippert-Rasmussen (eds), *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford: Oxford University Press, 2006b).

⁷¹ For further discussion of this idea, see Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2011), chs 6 and 7; and Victor Tadros, 'Wrongful Intentions without Closeness', *Philosophy & Public Affairs*, 43 (2015), 52-74.

individual has a very weighty interest in not being used as a mere means, even if it is otherwise beneficial to her. This tracks the idea that every individual has her own life to lead, and that to impose (even beneficial) ends on her would be to treat her in a way that denies her status as morally autonomous agents. This is the *means principle*.⁷² Armed with this idea, we can explain what is unjust about Jackie's treatment in *Conscription*, as well as what is unjust about a wide range of arrangements and distributions of work. It is a principle that underpins a great deal of the analysis that follows.

2.7 From Interests to Accounts

My remarks in this chapter have been highly preliminary. My aim has been to clear the foundations, and thus to illuminate some of the considerations to which a complete account of justice in work must be sensitive. To conclude this chapter, I want briefly to mention two factors that further complicate our investigation. Each of these factors prevents us from unproblematically deriving substantive conclusions about how to arrange and to distribute work from the tentative remarks that I have issued so far.

First, when we develop an account of justice in work, we must do so in a way that respects individuals' rights. These rights prevent us from treating an individual in

⁷² The means principle, as well as the interests that support it, are about individuals' entitlements. On some views, these entitlements derive solely from claims about what is *good* for an individual, such that we ought not to use an individual as a mere means only because it is bad for her for us to do so. On other views, these entitlements do not derive solely from claims about what is good for an individual. Though I suspect that the means principle is more plausible when we understand it in the latter way, my analysis does not depend upon this reading of the principle and, for this reason, I shall remain agnostic about the choice between the two.

certain ways that advance her or others' interests. The means principle provides one illustration of this fact. The principle prevents us from simply aggregating individuals' various interests, and then arranging and distributing work accordingly.

Second, even if individuals did not have rights, it would not be clear how much weight we ought to attach to any of the interests that I have discussed. This problem has two dimensions. The first dimension concerns interpersonal comparisons of the same interest. If two individuals each have an interest in X, but we have the capacity to secure X for only one individual, how should we select between the two? Perhaps we should flip a coin. But, what if there are differences between them, say, one's life is much more successful than the other's? Any map of how various arrangements of work affect individuals' interests cannot by itself answer this question, since a satisfactory response must be sensitive to further factors, including distributive concerns. The second dimension involves comparisons of different interests. If two individuals have an interest in X and Y, respectively, but we have the capacity to secure only X or Y, how should we select between the two? Again, no map of how various arrangements of work affect individuals' interests can by itself answer this question.

My aim in the remainder of this thesis is to confront this and other problems in order to make progress with constructing and defending a compelling account of justice in work that is sensitive to the multitude of ways in which different arrangements and distributions of work can affect various kinds of interests.

3 Rawls at Work

My aim in this chapter is to evaluate an account of justice in work that is inspired by Rawls's justice as fairness.¹ More specifically, I advance two claims. First, I show that, in virtue of its commitment to the principle of basic liberties, justice as fairness accurately identifies many of the weightiest reasons to which an account of justice in work must be sensitive. It is for this reason that justice as fairness is able correctly to explain why certain arrangements and distributions of work are unjust. Second, I show that justice as fairness makes several implausible claims and, in any case, it remains problematically incomplete, in the sense that it leaves many important issues unresolved. More specifically, I show that we must resist both the principle of fair equality of opportunity and the difference principle, and, for these reasons, we must develop a replacement account.

In addition to the fact that justice as fairness accurately identifies many of our weightiest reasons relevant to an account of justice in work, it is useful to begin with justice as fairness for two further reasons. First, as Robert Nozick famously points out, Rawls's work is so impressive and influential that 'Political philosophers now must either work within Rawls' theory or explain why not'.² Second, there have recently been a number of contributions analysing in further detail the way in which justice as fairness bears upon the just arrangement and distribution of work.³ The aim of these

¹ Rawls, *A Theory of Justice*; and Rawls, *Justice as Fairness*.

² Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 183.

³ For example, see Arnold, 'The Difference Principle at Work'; Nien-hê Hsieh, 'Workplace Democracy, Workplace Republicanism, and Economic Democracy', *Revue de Philosophie Économique*, 8 (2008b), 57-78; Keat, 'Anti-Perfectionism, Market Economies, and the Right to Meaningful Work'; O'Neill, 'Three Rawlsian Routes Towards Economic Democracy'; and Rose, 'Money Does Not Guarantee Time'.

contributions has been to extend or to amend justice as fairness in ways that yield more plausible and determinate conclusions concerning the just arrangement and distribution of work, thereby enabling it to provide a more compelling account of justice in work. I shall assess the plausibility of these attempts.

3.1 An Overview of Justice as Fairness

I shall begin with a brief overview of justice of fairness, which frames the more detailed discussion that follows. Rawls defines justice as fairness in terms of a commitment to three principles of justice:

The principle of basic liberties: Each individual has the same inalienable claim to a fully adequate scheme of basic liberties, which is compatible with the same scheme of liberties for all.

The principle of fair equality of opportunity: Social and economic inequalities are to be attached to offices and positions open to all under conditions of fair equality of opportunity.

The difference principle: Social and economic inequalities are to be to the greatest benefit of the least advantaged members of society.⁴

These three principles are not competitors. Rather, justice as fairness prioritises the first principle over the second principle, and the second principle over the third

⁴ Rawls, *Justice as Fairness*, 42.

principle. For Rawls, this priority is lexical, such that we may concern ourselves with the principle of fair equality of opportunity only once we satisfy the principle of basic liberties; and, similarly, we may concern ourselves with the difference principle only once we satisfy the principle of fair equality of opportunity.⁵ Many commentators hold that Rawls's view is too extreme and that we should reject the lexical ordering that he assigns to the principles.⁶ Though I am sympathetic to these objections, I shall not rely upon them here. For my purposes, all that matters is that we assign some priority to the first principle over the second principle, and to the second principle over the third principle.

Let me add two clarifications. First, justice as fairness specifies the content of each of these principles in terms of *social primary goods*. When the principles claim to govern the distribution of the social and economic inequalities, we measure these in terms of social primary goods. We identify a good as a social primary good by referring to two tests, which operate as necessary and jointly-sufficient conditions on a good qualifying as a social primary good: the *all-purpose means test* and the *publicity test*.

With respect to the all-purpose means test, Rawls asserts that the social primary goods refer to all-purpose means that every free and equal person generally needs in order both to participate freely and equally in fair social cooperation and to pursue her ambitions.⁷ Goods that do not pass this test are not social primary goods, and thus

⁵ Ibid., 43.

⁶ See Philippe Van Parijs, 'Difference Principles', in Samuel Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), 225. See also Brian Barry, 'John Rawls and the Priority of Liberty', *Philosophy & Public Affairs*, 2 (1973), 274-90. For a reply, see Robert Taylor, 'Rawls's Defense of the Priority of Liberty: A Kantian Reconstruction', *Philosophy & Public Affairs*, 31 (2003), 246-71.

⁷ Rawls, *Justice as Fairness*, 57.

inequalities in their distribution are not governed by either the principle of fair equality of opportunity or the difference principle. In order to identify goods that pass this test, it is necessary to invoke ‘various general facts about human needs and abilities, their normal phases and requirements of nurture, relations of social interdependence, and much else’.⁸ Rawls thinks that it is only by making these assumptions that we are able to identify income and wealth, for example, as goods that pass this test. (I address this claim in much greater detail in section 4.2.)

The all-purpose means test restricts the range of inequalities that are relevant to justice. The justification for this restriction appeals to the idea that it is valuable for principles of justice to regulate the distribution of goods whose value we can reasonably expect all individuals to accept. The fact that the value of the social primary goods is capable of wider public acceptance is in turn important, as it ensures that the principles of justice operate in a way that is consistent with the requirements of anti-perfectionism that I outlined in chapter 1.⁹

In addition to the all-purpose means test, a good must also pass the *publicity test* in order to qualify as a social primary good. This test dictates that a good’s distribution must be both capable of effective regulation and epistemically accessible – that is, the good’s distribution must be capable of being verified with a reasonable degree of accuracy.^{10,11} If a good were such that its distribution were either incapable of effective

⁸ Ibid., 58.

⁹ Matthew Clayton and Andrew Williams, ‘Egalitarian Justice and Interpersonal Comparison’, *European Journal of Political Research*, 35 (1999), 445-64 at 459-60.

¹⁰ Clayton and Williams, ‘Egalitarian Justice and Interpersonal Comparison’, 451-2; Robert Hockett and Mathias Risse, ‘Primary Goods Revisited: The ‘Political Problem’ and its Rawlsian Solution’, *Cornell Law School Legal Studies Research*, 55 (2006); Rawls, *Political Liberalism*, 182; and Andrew Williams, ‘Incentive, Inequality, and Publicity’, *Philosophy & Public Affairs*, 27 (1998), 225-47, esp. § 7.

regulation and/or epistemically inaccessible, then, even if its distribution would otherwise be unjust, there could be no injustice since we would not know about it and would not know how (best) to respond. It is the commitment to identifying action-guiding principles of justice that justifies the publicity test.

Pursuing this strategy, Rawls identifies five social primary goods that satisfy both the all-purpose means test and the publicity test. These are: (a) certain basic rights and liberties: freedom of thought and liberty of conscience, and the rest; (b) freedom of movement and free choice of occupation against a background of diverse opportunities; (c) powers and prerogatives of offices and positions of authority and responsibility or, what I shall call, advantaged social positions; (d) income and wealth; and (e) the social bases of self-respect.¹² Though none of the three principles governs the distribution of all five social primary goods, the distribution of each of the five social primary goods is governed by at least one of the three principles of justice.

Turning to the second clarification, though Rawls formulates his theory in terms of *principles* of justice, it is possible also to express justice as fairness in terms of *reasons* of justice – that is, reasons that justify the exercise of political power – or *duties* of justice – that is, duties to exercise political power in certain ways – or *rights*.¹³ In this

¹¹ Here, I depart from those who claim also that its distribution must also be capable of being verified without drawing on essentially private information. See Hockett and Risse, ‘Primary Goods Revisited’. On my view, a good may qualify as a social primary good even if its distribution is not capable of being verified without drawing on essentially private information, since each individual could fess up to what they have. Under conditions of strict compliance, there is no reason to think that there would be anything morally problematic about requiring this of each individual, providing individuals are relatively good judges of what they have.

¹² Rawls, *Justice as Fairness*, 58-9. See also Rawls, *A Theory of Justice*, 348-50.

¹³ When I say that ‘we have reasons and/or a duty to X’, I mean that ‘we have reasons and/or a duty to exercise political power to X’.

language, justice as fairness states that we have reasons – indeed, a duty – to satisfy each of the three principles mentioned. Our duty to satisfy the principle of basic liberties is prior, perhaps lexically so, to our duty to satisfy the principle of fair equality of opportunity; and, our duty to satisfy the principle of fair equality of opportunity is prior, perhaps lexically so, than our duty to satisfy the difference principle. Where necessary, I shall appeal to reasons, duties, and rights, as well as principles, since this allows me to proceed with a greater degree of clarity.

In sections 3.2 and 3.3, I defend a version of the principle of basic liberties and illuminate some of its implications for the just arrangement and distribution of work. In section 3.4, I then consider a plausible extension of the principle of basic liberties. In section 3.5, I draw together the conclusions of the previous three sections, and I examine the implications of these conclusions. In each of sections 3.6 and 3.7, I present a distinctive version of the principle of fair equality of opportunity. However, I show that neither offers a compelling principle by which to guide society's arrangement and distribution of work. In section 3.8, I reconstruct the difference principle and clarify its implications for an account of justice in work. In section 3.9, I then demonstrate that, though the difference principle accurately identifies certain ways in which a society's arrangement and distribution of work can be unjust, it is insufficiently fine-tuned to be capable of determining more precisely how we ought to guide society's arrangement and distribution of work.

3.2 The First Moral Power

Justice as fairness takes it as axiomatic that we should view society as a fair system of social cooperation between free and equal citizens. The subsequent task for political philosophy, then, is to identify the implications of this claim. Or, more precisely, it is to

specify what individuals owe each other as a matter of justice, if each is a free and equal participant in a fair system of cooperation.

According to Rawls, to treat an individual as free and equal requires that we recognise that she has an interest in possessing the two *moral powers*.¹⁴ The first moral power refers to each individual's capacity 'to understand, to apply, and to act from (and not merely in accordance with) principles of political justice that specify the fair terms of social cooperation'.¹⁵ That is, the first moral power refers to each individual's capacity for a *sense of justice*.

The second moral power refers to each individual's capacity 'to have, to revise, and rationally to pursue a conception of the good'.¹⁶ That is, the second moral power refers to each individual's capacity for *ambitions*. More specifically, justice as fairness states that each individual has a weighty political-ideal-based interest in the adequate development and exercise of her two moral powers.¹⁷ In turn, this justifies a right to, and a corresponding enforceable duty to protect, the opportunities necessary for the adequate development and exercise of her two moral powers. This is how I shall understand the content of the principle of basic liberties.¹⁸

¹⁴ Rawls, *Justice as Fairness*, 19.

¹⁵ Ibid.

¹⁶ Ibid. As I understand it, the adjective 'adequate' governs both the development *and* the exercise of the two moral powers, such that each individual has an interest in the adequate development and adequate exercise of her two moral powers.

¹⁷ John Rawls, 'Kantian Constructivism in Moral Theory', *The Journal of Philosophy*, 77 (1980), 515-72 at 525.

¹⁸ Ibid., 45. Strictly speaking, Rawls characterises the principle in terms of the 'full exercise of the two moral powers', but this is misleading and can be replaced with the phrase 'adequate exercise of the two moral powers', as I have done. See Rawls, *Political Liberalism*, 332; and Jeppe von Platz, 'Are Economic Liberties Basic Rights?', *Politics, Philosophy & Economics*, 13 (2014), 23-44 at 32-4.

There are two caveats to this. First, the principle of basic liberties asserts that each individual has a right to the *political and social conditions* necessary for the adequate development and exercise of the two moral powers.¹⁹ The principle does not protect a range of other conditions, such as psychological conditions, that are necessary for the adequate development and exercise of the two moral powers. The justification for restricting the principle in this way appeals to the publicity test and, in particular, to the fact that we are incapable of effectively regulating certain conditions, such as psychological conditions, that are necessary for the adequate development and exercise of the two moral powers. To be sure, it is consistent with this conclusion that the principle of basic liberties should protect the political and social conditions necessary for satisfaction of other conditions, such as psychological conditions, that are themselves necessary for the adequate development and exercise of the two moral powers.

Second, it is important for me to note that the name of this principle may be misleading, since, in its most plausible form, the principle of basic liberties requires us to protect things other than certain liberties. In particular, the principle of basic liberties requires us to protect entitlements to certain opportunities (such as to education, work, and leisure) and to basic material goods and services, when doing so is necessary for the adequate development and exercise of the two moral powers. This is because there is no reason to single out liberties in particular, when certain opportunities and basic material goods and services can be as important. It is for these reasons that Arnold concludes that we should abandon the principle of basic liberties, understood as concerned exclusively with liberties, and instead embrace a principle that takes seriously the full range of liberties, opportunities, and goods that are essential to

¹⁹ Rawls, *Justice as Fairness*, 45.

the adequate development and exercise of the two moral powers.²⁰ I am sympathetic to this line of argument, though I shall continue to refer to it as the principle of basic liberties. What's important, though, is that I shall understand this principle in a much more expansive way, so that it accommodates Arnold's concerns.

The principle of basic liberties is important to an account of justice in work for several reasons. For example, some political philosophers, including Rawls, claim that the principle of basic liberties may justify a basic right to freedom of occupational choice.²¹ Since I will examine this claim in chapter 7, I do not do so in this chapter. Instead, I elaborate and defend two different implications of the principle of basic liberties, one relating to each of the two moral powers.

Let me begin with the first moral power, which refers to the capacity for a sense of justice. According to the principle of basic liberties, therefore, each individual has a basic right to the political and social conditions essential for the adequate development and exercise of her capacity for a sense of justice. By implication, this justifies a basic right both to those political and social conditions that secure an individual's capacity to maintain a sense of justice, and against those conditions that jeopardise it.

As I noted in the previous chapter, some Rawlsians appeal to this implication to defend greater democratic provisions within firms. There are a wide range of

²⁰ Samuel Arnold, 'Putting Liberty in its Place: Rawlsian Liberalism Without the Liberalism', (unpublished manuscript).

²¹ John Rawls, 'The Basic Liberties and Their Priority', *Tanner Lectures on Human Values* (Salt Lake City: University of Utah Press, 1982), 3-87 at 50. See also Michael Titelbaum, 'What Would a Rawlsian Ethos of Justice Look Like?', *Philosophy & Public Affairs*, 36 (2008), 289-322; and John Tomasi, *Free Market Fairness* (Princeton: Princeton University Press, 2012), ch. 2. Rawls excludes freedom of occupational choice from his list of basic liberties in *Political Liberalism*, 181 and 308.

possibilities here. One dispute concerns whether the argument implies a basic right to democratic provisions at work or merely a basic right against certain undemocratic arrangements at work.²² Proponents of the former view claim that there is a basic right to democratic provisions, since these are allegedly necessary for individuals' adequate moral development.²³ By contrast, proponents of the latter view claim that there is a basic right against certain undemocratic arrangements, since these dampen individuals' sense of justice.²⁴ The latter view is more modest than the former in so far as we can meet its demands by not working at all. A second dispute concerns the nature and extent of these democratic provisions. For example, whereas some commentators seek, ultimately, to justify a basic right to worker ownership, others favour a form of democratic corporatism, whereby a number of associations that represent various groups of individuals (workers, owners, etc.) meet regularly to discuss matters relating to their firms and to the parameters of the market more generally.²⁵

I shall focus specifically on the position that O'Neill advances. He appeals to the principle of basic liberties in order to defend 'measures to increase the discretion that individual workers have over their role in the workplace; policies for the protection and promotion of strong trade union rights; the enactment of forms of co-determinism; and so on'.²⁶ According to O'Neill, the reason for this is that 'unless individuals have some first-hand experience in the deliberative direction of some

²² For pushing me to clarify this, I thank James Christensen.

²³ For example, see Hussain, 'Nurturing the Sense of Justice'.

²⁴ For example, see Hsieh, 'Workplace Democracy, Workplace Republicanism, and Economic Democracy'.

²⁵ For example, see O'Neill, 'Three Rawlsian Routes Towards Economic Democracy'; and Hussain, 'Nurturing the Sense of Justice'.

²⁶ O'Neill, 'Three Rawlsian Routes Towards Economic Democracy', 47.

collective enterprise (such as a firm), then they will lack the skills that will be needed in order to participate fully in “the free use of public reason” in democratic politics’.²⁷ I focus on this view not because I take it to be the most plausible or well-argued possibility. Instead, it is because this position is illustrative of these kinds of arguments and, therefore, my treatment of it should be generalisable to variations on O’Neill’s position.

This argument fails. It relies upon unsupported empirical speculation about the necessity of greater democratic provisions to maintaining a sense of justice. There are two grounds for suspicion. According to the first, we should reject O’Neill’s argument on the grounds that it is incorrect to claim that, in order to maintain a sense of justice, each individual needs ‘some first-hand experience in the deliberative direction of some collective enterprise’. Within a society that has a healthy regime of civic education, say, there is no reason to accept this claim. According to the second, even if some first-hand experience is necessary, there is no reason to think that this experience cannot be gained in other, non-work-related spheres, such as in schools or private associations.²⁸ To be sure, it may be that, in the society in which we currently live, many individuals lack these opportunities outside of work, say, because work takes up so much of people’s time.²⁹ However, this simply gives us reasons to ensure that this is not the case; by itself, it does not cast doubt on the present point.

We can, though, justify a more modest conclusion. Rawls remarks that economic and social inequalities tend to ‘arouse widespread attitudes of deference and servility on one side and a will to dominate and arrogance on the other’.³⁰ This is a

²⁷ Ibid., 35.

²⁸ O’Neill acknowledges this reply. See *ibid.*, 41.

²⁹ For this worry, see Hussain, ‘Nurturing the Sense of Justice’, 195.

³⁰ Rawls, *Justice as Fairness*, 131.

familiar psychological claim about the formative effects of economic and social inequalities.³¹ It draws our attention to the fact that, in arousing the aforementioned attitudes, economic and social inequalities may jeopardise an individual's sense of justice. If correct, the principle of basic liberties would then justify a basic right against those economic and social inequalities. Though this argument does not justify a basic right to greater democratic provisions at work, it might justify a more limited basic right against certain kinds of workplace relationships, namely those that threaten an individual's capacity to maintain a sense of justice.

We must determine the content of this basic right by referring to empirical facts that concern the formative effects of various workplace relationships on the capacity to maintain a sense of justice. For two reasons, this is a very difficult task. First, there are very few psychological studies, if any, that investigate the formative effects of various workplace relationships on the capacity to maintain a sense of justice. This is in part because psychologists tend to focus on the other formative effects of certain kinds of workplace relationships, such as their effects on a worker's self-confidence or intelligence, but also in part because the Rawlsian idea of 'a sense of justice' is a quite specific one that is not commonly discussed by psychologists, who instead tend to investigate the predictors of other senses, such as a sense of empathy or fairness.³² Of course, this is not to deny that it may be possible to use empathy or fairness as highly imperfect proxies for a sense of justice.

³¹ For example, see Jean-Jacques Rousseau, *A Discourse on Inequality* (Harmondsworth: Penguin, 1984 [1754]). See also Judith Shklar, *Political Thought and Political Thinkers* (Chicago: University of Chicago Press, 1998), 276-293, esp. 288-90.

³² For example, see Kohn and Schooler, 'The Reciprocal Effects of the Substantive Complexity of Work and Intellectual Flexibility'; Kohn and Schooler, *Work and Personality*; and Kornhauser, *Mental Health of the Industrial Work*.

Second, it is also a very difficult task because the formative effects of various workplace relationships are themselves sensitive to a multitude of further variables. The extent to which a given level of economic and social inequality within a workplace relationship threatens a worker's capacity to maintain a sense of justice is sensitive to the number of hours that she spends at work, public attitudes towards the kind of work that she does, and a whole host of other factors. Put simply, there is no reason to think that the same workplace relationships that threaten to undermine a sense of justice in one society will also threaten to undermine it in another society. This makes it very difficult to speculate generally and accurately about the content of this right, even with the use of regression analyses.³³

Having said this, it is plausible to suppose that the principle of basic liberties grants protection against those workplace relationships that involve a *very* large inequality in decision-making, defined in terms of the power to determine the worker's goals, working conditions, and work activities, including the order in which the activities must be performed.³⁴ This is because workplace relationships marked by these properties are the ones most likely to arouse attitudes of servility and arrogance, which are the most antagonistic to the maintenance of a sense of justice.³⁵ For this reason, I shall call this the basic right against *relationships of servility*.

³³ Rawls similarly writes: 'Which of these systems and the many intermediate forms most fully answers to the requirements of justice cannot, I think, be determined in advance. There is presumably no general answer to this question, since it depends in large part upon the traditions, institutions, and social forces of each country, and its particular historical circumstances.' See Rawls, *A Theory of Justice*, 242.

³⁴ Fabian Schuppert, 'Being Equals: Analyzing the Nature of Social Egalitarian Relationships', in Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer (eds), *Social Equality: On What It Means to Be Equals* (Oxford: Oxford University Press, 2015), 107-27.

³⁵ Robert Folger, 'Workplace Justice and Employee Worth', *Social Justice Research*, 7 (1994), 225-40.

3.3 The Second Moral Power

The second moral power refers to the capacity for ambitions. According to the principle of basic liberties, each individual has a basic right to the political and social conditions essential for the adequate development and exercise of her capacity for ambitions. Importantly, though, to say that an individual has a capacity for ambitions is to say not only that she has a capacity to have certain beliefs about what is of value (to her). Rather, in addition to this, she must also enjoy a sufficient level of confidence in these beliefs and their importance. In other words, she must enjoy self-respect if she is to have the capacity for ambitions. For reasons made familiar in the previous chapter, an individual cannot enjoy a basic right to self-respect as such; instead, she can enjoy a basic right only to the social bases of self-respect. I shall call this the basic right to *the social bases of self-respect*. To be sure, I focus on this right not because it is the only right that we can justify by appeal to the principle of basic liberties. Rather, I focus on it because of its importance and its centrality to an account of justice in work.³⁶

As with the basic right against relationships of servility, we must determine the content of the basic right to the social bases of self-respect by referring to the empirical facts concerning the formative effects of various workplace relationships. Unlike with the first basic right, however, there is a much greater body of empirical literature to which we can refer in this case. Evidence shows that amongst the factors most destructive to self-respect are inequalitarian social relationships. It is worth distinguishing between two kinds of inequalitarian social relationships. First, there are relationships in which one party enjoys to a much lesser extent than others the capacity to exert control over her own working life, as well as the working lives of her

³⁶ Rawls, *Political Liberalism*, lvii.

colleagues. Second, there are relationships in which one party feels stigmatised. Both of these relationships threaten self-respect.³⁷

To be sure, it is again important to note that the exact formative effects of various arrangements and distributions of work are themselves sensitive to a multitude of further variables, including the number of hours that she spends at work and public attitudes towards the kind of work that she does, for example. As I noted earlier, this makes it very difficult to speculate accurately about the content of the basic right to the social bases of self-respect.

I should add two clarifications. First, the principle of basic liberties does not justify a basic right against all arrangements of work that are likely to reduce confidence in an individual's convictions. It claims only that an individual has a basic right against arrangements of work that threaten an individual's self-respect, where this is understood in terms of a *sufficient* level of confidence in her beliefs and their importance. That is, the principle of basic liberties justifies a basic right to the social bases of self-respect, not a right against any damage to her self-confidence.

Finally, it is noteworthy that the basic right to the social bases of self-respect may generate similar protections to the basic right against relationships of servility. This is because the political and social conditions essential for the adequate development and exercise of the capacity for a sense of justice may be similar to the political and social conditions essential for the adequate development and exercise of the capacity for ambitions. If this is the case, certain arrangements of work may be unjust for two reasons, corresponding to each of these two basic rights. On this view, the basic right to the social bases of self-respect simply provides an additional reason to ensure or to prevent certain arrangements and distributions of work.

³⁷ Doppelt, 'Rawls' System of Justice'.

3.4 Treating Others as Equals

Justice as fairness begins with the idea that we should view society as a fair system of social cooperation between participants who are free and equal citizens – that is, between individuals who we conceive of as having a weighty political-ideal-based interest in the adequate development and exercise of the two moral powers. Significantly, however, Rawls does not claim that these interests exhaust the political-ideal-based interests of free and equal individuals.³⁸ Moreover, at times, Rawls writes as if they possess other interests, of the same or a similar kind. Elaborating on the idea of society as a fair system of social cooperation between free and equal individuals, Rawls writes:

in a society well ordered by the principles of justice as fairness, citizens are equal at the highest level and in the most fundamental respects. Equality is present at the highest level in that citizens recognize and view one another as equals. Their being what they are – citizens – includes their being related as equals; and their being related as equals in part both of what they are and of what they are recognized as being by others. Their social bond is their public political commitment to preserve the conditions their equal relation requires.³⁹

On the basis of this statement, we can identify a third political-ideal-based interest. It is an interest in being treated as an equal. Like the interest in the adequate development and exercise of the two moral powers, this interest is sufficiently weighty to justify a basic right, and corresponding duty, to treat each individual as an equal. I shall call this the basic right to *be treated as an equal*. We can further expound this basic right by referring to the notion of *recognition respect*, which, stated in general terms, requires

³⁸ Rawls, 'Kantian Constructivism in Moral Theory'.

³⁹ Rawls, *Justice as Fairness*, 132.

‘giving appropriate acknowledgement of their intrinsic value in one’s thoughts and actions, which at the very least means acting in ways that are consistent with their intrinsic value’.⁴⁰

It may be helpful to add two clarifications. First, in order to explain why each individual has a basic right to *equal* recognition respect, we must appeal to the idea of basic equality. Basic equality refers to the fact that each individual is entitled to equal recognition respect because (i) she possesses some morally relevant capacity – say, the capacity for rationality – within some given range, and (ii) inequalities with respect to this capacity within this range do not affect her entitlement to equal recognition respect.⁴¹ Second, in demanding equal recognition respect, this basic right is a distinct right, by which I mean that the duty it justifies is not a purely formal duty that an individual automatically discharges whenever she discharges her other duties.⁴² The basic right to be treated as an equal provides independent grounds by which certain kinds of treatment may be unjust.

This right explains what is unjust about an individual holding certain attitudes or having certain beliefs about her fellow citizens.⁴³ It explains why it is unjust for an

⁴⁰ Andrew Mason, ‘Justice, Respect, and Treating People as Equals’, in Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer (eds), *Social Equality: On What It Means to Be Equals* (Oxford: Oxford University Press, 2015), 139. Mason quotes from Stephen Darwall, ‘Two Kinds of Respect’, *Ethics*, 88 (1977), 36-49.

⁴¹ Claim (ii) is especially controversial. See Ian Carter, ‘Respect and the Basis of Equality’, *Ethics*, 121 (2011), 538-71. I should add that it is consistent with this that there may be multiple ranges within which individuals’ capacities may fall. See Nozick, *Anarchy, State, and Utopia*, 45-7; and Jeff McMahan, ‘Cognitive Disability and Cognitive Enhancement’, *Metaphilosophy*, 40 (2009), 582-605.

⁴² Joseph Raz, *Value, Respect, and Attachment* (Cambridge: Cambridge University Press, 2001), 126.

⁴³ For a defence of this claim within the context of discrimination, see Slavny and Parr, ‘Harmless Discrimination’.

individual to hold contempt for another in virtue of her race or sex, or for her to operate with a demeaning stereotype, for example.⁴⁴ In addition to this, the right also explains what is unjust about certain kinds of relationships between individuals. Certain relationships are *in themselves*, and not because of either their causes or their effects, inconsistent with the idea of society as a fair system of social cooperation between free and equal individuals. This is a conceptual claim about what it means for one individual to treat another as an equal.

Jeffrey Reiman offers one plausible characterisation of this claim. When discussing the wrongness of execution, he notes that there is something awful and morally offensive about ‘the spectacle of one human being completely subject to the power of another’.⁴⁵ Our unease with this kind of total subjugation partly explains the wrongness of slavery and prostitution, as well as the wrongness of others relationships that share the same property.⁴⁶ Moreover, the injustice of these relationships is

⁴⁴ Mason, ‘Justice, Respect, and Treating People as Equals’, 141. To be sure, Mason does not say that these cases involve *injustice*. Instead, he claims that they are inconsistent with the ideal of social equality, which is distinct from justice. As Mason correctly notes, this disagreement is a terminological matter. See Mason, ‘Justice, Respect, and Treating People as Equals’, 130-1.

⁴⁵ Jeffrey Reiman, ‘Justice, Civilization, and the Death Penalty: Answering van den Haag’, *Philosophy & Public Affairs*, 14 (1985), 115-48 at 140.

⁴⁶ Reiman, ‘Justice, Civilization, and the Death Penalty’, 140. Jean-Jacques Rousseau offers a similar view when discussing the wrongness of slavery. See his *The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 1997 [1762]), 45. Two qualifications are necessary. First, Rousseau is more concerned with renouncing freedom than with relationships between individuals as such. Second, according to Rousseau, in addition to being inconsistent with ‘the nature of man’ *in itself*, relationships of slavery are also inconsistent with ‘the nature of man’ *because of their effects*. For illuminating analysis of this dimension of Rousseau’s thought, see Frederick Neuhaus, *Rousseau’s Critique of Inequality* (Cambridge: Cambridge University Press, 2014), 165-8.

independent of both whether they are entered into voluntarily and their consequences (though it is consistent with this that the relationship is more unjust when it is not entered voluntarily and/or when it has worse consequences). When one individual enters into a relationship of this kind with another, even when this occurs voluntarily and is otherwise beneficial to all relevant parties, she fails to treat her as an equal, and thus acts unjustly.

We must determine the content of the basic right to be treated as an equal by elaborating on Reiman's claim about the wrongness of total subjugation. Which properties in particular are necessary and sufficient for a relationship to involve total subjugation? I shall not answer this question fully. Instead, I want simply to gesture at an answer, thereby motivating a concern for the implications of this basic right. We can begin with Scanlon, who plausibly focuses our attention on unacceptable relations of power and domination that give 'some people an unacceptable degree of control over the lives of others'.⁴⁷ On this view, slavery is unjust, at least in part (though perhaps not principally in part), because it creates unacceptable relations of power and domination, of a kind that are inconsistent with the idea of society as a fair system of social cooperation between individuals regarded as free and equal. Again, this may remain the case even if the relationship is entered into voluntarily and even if its consequences are entirely benign.

If successful, this argument would justify a duty to arrange and distribute work so as to prevent individuals from having an unacceptable degree of control over the lives of others. This may produce a duty to prevent certain kinds of workplace relationships that involve a very large inequality in decision-making power. One way in which to achieve this is by refusing to treat the contracts on which these relationships

⁴⁷ Scanlon, *The Difficulty of Tolerance*, 205.

are founded as morally binding.⁴⁸ Here, I should add two points. First, we do not have a duty to prevent all workplace relationships that involve a very large inequality in decision-making power. Many aspects of a footballer's life are controlled by her club, including her diet, what she may post on social media, and whether or not she may smoke, but we are not duty-bound to prevent or not to enforce these kinds of contracts. Presumably, this is partly to do with both their avoidability and, relatedly, to do with the fact that they are binding for a relatively short period of time only. When this is not the case, such as with an individual who must take on a particular job in order to survive, it is clearer that there is an injustice involved.⁴⁹

Second, the plausibility of the claim depends also upon what we deem a 'very large inequality in decision-making power'. Whilst it is clear that relationships of slavery satisfy this condition, it is similarly clear that most workplace relationships that involve some inequality in decision-making power do not satisfy this condition. Where, then, should we draw the line? I fear that there is no more satisfactory way to answer this question than to appeal to our intuitions about what it means for a relationship to involve total subjugation. Proceeding on this basis, we reach the conclusion that only very few relationships will be condemnable on these grounds – that is, only very few relationships are in themselves inconsistent with the idea of society as a fair system of social cooperation between individuals regarded as free and equal. In an important sense, therefore, the purpose of this section is only to draw attention to this conceptual space within justice as fairness. I do not mean to subscribe to the more ambitious

⁴⁸ Samuel Freeman, 'Illiberal Libertarians: Why Libertarianism is Not a Liberal View', *Philosophy & Public Affairs*, 30 (2002), 105-151 at 108-15.

⁴⁹ Similarly, Mill writes: 'The generality of labourers in this and most other countries, have as little choice of occupation or freedom of locomotion, are practically as dependent on fixed rules and on the will of others, as they could be in any system short of actual slavery'. See Mill, *Principles of Political Economy*, 367.

claim that the basic right to be treated as an equal plays a significant role in explaining injustices in contemporary job markets (though it is possible that it plays a more significant role with respect to historical cases).

To conclude this section, I shall comment on the relationship between the basic right to be treated as an equal and the basic right against relationships of servility. In one way, these two rights are very closely related: both grant protections against workplace relationships that involve a very large inequality in decision-making power. However, there are also two important differences between them. First, whereas the basic right to be treated as an equal shows how these workplace relationships can be unjust *in themselves*, the basic right against relationships of servility shows how these workplace relationships can be unjust *because of their consequences*. In this sense, the two rights exhibit a fundamentally different justificatory structure. Second, though it is contingent upon the empirical data, I suspect that the basic right against relationships of servility will be in one way more expansive than the basic right to be treated as an equal. This is because, given plausible assumptions about human psychology, there will be workplace relationships that threaten an individual's sense of justice and thus violate the basic right against relationships of servility, but are not in themselves inconsistent with the idea of society as a fair system of social cooperation between free and equal citizens, and thus do not violate the basic right to be treated as an equal.

3.5 Work as a Private Association?

The purpose of the three previous sections has been to explore two features of justice as fairness and to argue in defence of their plausibility. In this respect, I have argued that we ought to arrange and distribute work in a way that protects three basic rights: the basic right against relationships of servility, the basic right to the social bases of

self-respect, and the basic right to be treated as an equal. In this section, I consider the implications of this conclusion, especially with respect to the social institutions that ought to guide society's arrangement and distribution of work.

3.5.1 The Importance of the Two Moral Powers

We begin with the *libertarian view*.⁵⁰ This view states that the internal life of a firm – that is, the way in which a firm arranges and distributes work – is immune to regulation by principles of justice. This is because a firm is a private association between individuals. At its core, the libertarian view seeks to trade upon the fact that a firm, like a private association, is essentially a collection of individuals who privately agree to contribute to a joint enterprise.⁵¹ If this comparison is correct, then we have no more reason to regulate the internal life of a firm than to regulate the internal life of a darts team.

Let me emphasise two features of this view. First, it purports to show that we lack reasons to regulate the internal life of a firm, even when regulation is necessary to ensure that we protect the three basic rights that I have defended. Accordingly, the libertarian view entails that firms should enjoy a moral permission to arrange their internal life in ways that involve relationships of servility, deny its workers the social bases of self-respect, and deny its workers treatment as an equal.

Second, it is open to a defender of the libertarian view to maintain that, though principles of justice do not regulate the internal life of a firm, there is a duty to ensure

⁵⁰ This view is close to that described in Nozick, *Anarchy, State, and Utopia*. Abraham Singer also claims that this view, or at least one similar to it, follows from Rawls's justice as fairness. Though I do not engage directly with Singer's interpretation, I see this section as refuting his views. See Abraham Singer, 'The Is No Rawlsian Theory of Corporate Governance', *Business Ethics Quarterly*, 25 (2015), 65-92.

⁵¹ Tomasi, *Free Market Fairness*, ch. 1.

that certain background conditions are in place. As an example of this, a defender of the view may plausibly maintain that an employment contract is just only if all the relevant parties give morally binding consent to that contract. This allows her to retain the theoretical resources necessary to object to forced employment, whereby a firm coercively enslaves an individual as a worker. After all, if the principles of justice did not apply to firms at all, even this practice could not be unjust!

This characterisation of a firm, as a particular kind of private association, has some intuitive force. In particular, it takes seriously the fact that individuals have an interest in freedom of association, and it may be set back when we regulate the internal life of a firm. Indeed, Rawls acknowledges the force of this point when, in his discussion of whether and how the principles of justice apply to the family, he states that ‘the same question arises in regard to all associations, whether they be churches and universities, professional and scientific associations, *business firms* and labour unions’.⁵²

Having said this, we must reject the libertarian view in favour of an alternative. This is for two reasons. First, in drawing a parallel between firms and private associations, the libertarian view mischaracterises the voluntariness of work, at least under many arrangements. In particular, though an individual typically has some say over which firm she decides to work for, under many arrangements, she lacks the opportunity not to work at all. This is problematic for the libertarian view because it is the voluntariness of private associations that justifies our reluctance to regulate their internal lives. One way in which to meet this objection is by asserting that we should make voluntary an individual’s decision to enter work – that is, to work at all. On this view, we have a weighty reason to protect a right of exit, which protects the

⁵² Rawls, *Justice as Fairness*, 164 [emphasis added].

opportunity to leave work altogether. We may be able to achieve this by providing generous entitlements to material resources to those individuals who are unemployed, perhaps in the form of an unconditional basic income.⁵³ A consequence of doing this is that, because work is made voluntary, firms are rendered more similar to private associations. This justifies greater reluctance to regulate the internal life of a firm. To the extent that a defender of the libertarian view is willing to make this move, she is immune to this first objection.⁵⁴

There remains a more fundamental objection, however. Even if we ought to treat a firm as akin to a private association, it does not follow that the firm should enjoy a moral permission to arrange its internal life in ways that involve relationships of servility, deny its workers the social bases of self-respect, and deny its workers treatment as an equal. This is because, as Rawls notes, though principles of justice may not regulate the internal life of a firm, they do impose certain ‘essential constraints’. Elaborating on this thought, Rawls says:

we distinguish between the point of view of people as citizens and their point of view as members of families and of other associations. As citizens we have reasons to impose the constraints specified by the political principles of justice on

⁵³ Robert Van der Veen and Philippe Van Parijs, ‘A Capitalist Road to Communism’, *Theory and Society*, 15 (1986), 635-56; Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford: Clarendon Press, 1995); Karl Widerquist, Jose A. Noguera, Yannick Vanderborght, and Jurgen De Wispelaere, *Basic Income: An Anthology of Contemporary Research* (Chichester: Wiley-Blackwell, 2013); Stuart White, ‘The Republican Case for Basic Income’, *Basic Income Studies*, 2 (2007), 1-7; Williams, ‘Basic Income and the Value of Occupational Choice’.

⁵⁴ Robert Taylor defends a view that is in some regards similar. He expresses reluctance to regulate the internal life of firms and justifies this by appeal to the role of effective backgrounds conditions. See Robert Taylor, ‘Market Freedom as Antipower’, *American Political Science Review*, 107 (2013), 593-602.

associations; while as members of associations we have reasons for limiting those constraints so that they leave room for a free and flourishing internal life appropriate to the association in question.⁵⁵

One justification for these constraints appeals to the idea that some interests are inalienable, such that an individual retains that interest even though she explicitly denies this. Clarifying this aspect of justice as fairness, Samuel Freeman writes:

To say these liberties are 'basic' does not simply mean they are more important than others and to be given a special weight. It also means they are 'inalienable' – 'any undertakings to waive or to infringe them are void *ab initio*'. Not only are government agents and democratic majorities precluded from violating basic liberties, but also citizens themselves cannot transfer them to others or bargain them away.⁵⁶

Because of their inalienability, we retain the duty to constrain the internal life of a firm in order to protect basic rights, even when an individual does not herself appreciate their importance. The fact that a firm is in this way like a private association is not sufficient to justify the libertarian view, since we also have reasons to constrain the internal lives of private associations in this way.

Though Rawls says very little in defence of the claim that rights of this kind are inalienable, we can say much more. In particular, we can appeal to the idea of self-regarding duties to support this conclusion. Self-regarding duties are duties that the duty-holder owes to herself in virtue of her own moral importance.⁵⁷ They most often arise when the cost to an individual of performing some act is very high and the

⁵⁵ Rawls, *Justice as Fairness*, 165.

⁵⁶ Freeman, *Rawls*, 51.

⁵⁷ Victor Tadros, 'Consent to Harm', *Current Legal Problems*, 64 (2001), 23-49 at 32.

benefits that others accrue are very low. For example, it would be wrong for a parent to shorten her life by twenty years, say, in order to protect her child from minor discomfort precisely because, if she were to do so, she would violate a self-regarding duty.⁵⁸ In the same way, basic rights generate self-regarding duties. This is because the interests that support basic rights are very weighty (and so it is very costly to give them up), and because the benefits of giving them up are (typically) very low.

To illustrate the present point, let's consider the basic right against relationships of servility. This basic right protects an individual's interest in having the capacity for a sense of justice. This interest is very important. Indeed, Rawls notes that when an individual deprives herself of her capacity for a sense of justice, she acts as though she belongs 'to a lower order', as though she were 'a creature whose first principles are decided by natural law' rather than by reason.⁵⁹ To appreciate the weight of this interest, we can consider the following case:

Crime: Kelly is in hospital, following her involvement in a sexual assault. She has temporary memory loss and cannot remember anything about the crime. She has been told about the incident, but she cannot remember whether she was the offender or the victim.⁶⁰

Obviously, it would be awful for Kelly to be a victim of a sexual assault. Kelly has very weighty reasons to avoid being a victim of a sexual assault. None the less, I strongly suspect that it is better for Kelly to be the victim rather than the offender. This suggests that our reasons to avoid (at least serious) wrongdoing are very weighty – indeed, weightier than our reasons to avoid becoming a victim of sexual assault. This

⁵⁸ Tadros, 'Consent to Harm', 30.

⁵⁹ Rawls, *A Theory of Justice*, 225.

⁶⁰ For this case, I thank Victor Tadros.

helps to support the conclusion that individuals have self-regarding duties to maintain the capacity for a sense of justice, which will help to protect them from acting wrongfully.

We can offer similar arguments with respect to the two other basic rights that I have discussed: the basic right to the social bases of self-respect and the basic right to be treated as an equal. In each case, an individual owes it to herself to protect the interests that justify these demands. Again, this is because the costs of giving up these interests are unduly high in comparison with the benefit they typically afford, and thus doing so violates a self-regarding duty.⁶¹

3.5.2 Avoiding Two Errors

I shall now evaluate the implications of the conclusions so far. At this stage, I do not make any specific institutional recommendations; I leave open the issue of whether it is better to constrain a firm directly, through the use of legal regulation, or indirectly, through the use of other institutions that predictably have the effect of guaranteeing the protection of basic rights. My present aim is to clarify the implications of the basic rights that I have discussed and, in particular, to highlight two opposite mistakes that we must avoid when thinking about these issues. Throughout, I focus on the implications of the basic right against relationships of servility and the basic right to the social bases of self-respect because, as I have suggested, the implications of the basic right to be treated as an equal are much more limited.

⁶¹ This is controversial. Libertarians deny that there is a duty to maintain the second moral power, so too do some liberals. For an example, see Elizabeth Anderson, 'What is the Point of Equality?', *Ethics*, 109 (1999), 287-337 at 330, where Anderson denies that there is an enforceable duty to accept aid that necessary to maintaining an individual's status as an equal. Anderson does not defend this claim.

The first mistake is that of believing that the principle of basic liberties provides a complete, or nearly complete, account of the political principles and social institutions that ought to guide society's arrangement and distribution of work. According to this view, we can determine which social institutions ought to guide society's arrangement and distribution of work by referring almost exclusively to the principle of basic liberties. This is because, so the arguments goes, the principle is a highly demanding one and thus only a relatively small range of social institutions are consistent with it.

This is a mistake, since it over-states the demandingness of the principle of basic liberties. The principle of basic liberties justifies neither a duty to prevent all relationships of servility nor a duty to protect against all arrangements and distributions of work are likely to reduce confidence in an individual's convictions. The principle's conclusions are much more modest than this. It justifies a duty to protect against only those servile relationships that threaten to undermine the capacity for sense of justice, and a duty to protect the political and social conditions essential for an individual to enjoy a sufficient level of confidence in her beliefs and their importance. The principle of basic liberties is, therefore, a sufficientarian principle that fails to address questions that arise once we have met the relevant thresholds.⁶²

This is to claim that we can determine which social institutions ought to guide society's arrangement and distribution of work without much reference to the principle of basic liberties. This is because, so the arguments goes, the principle is highly permissive, and thus it is consistent with a very large range of social institutions. This too is a mistake, since it under-states the demandingness of the principle of basic

⁶² For a statement of the appeal and the demands of sufficientarianism, see Harry Frankfurt, 'Equality as a Moral Ideal', *Ethics*, 98 (1987), 21-43.

liberties. As I have shown in this chapter, there is a multitude of ways in which various arrangements and distributions of work can, and in the real world do, violate the principle of basic liberties.

3.6 The Principle of Fair Equality of Opportunity

In this and the following section, we consider the principle of fair equality of opportunity. This principle states that ‘those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin’.⁶³ The principle has two components. First, it requires formal equality of opportunity or, in other words, it requires ‘careers are open to talents’. This justifies prohibiting arbitrary discrimination and certain barriers to entry in the job market.⁶⁴ Second, it requires substantive equality of opportunity, in the sense of equality of opportunity amongst individuals who share the same biological endowments and life plans. A child from a working class background should enjoy no less valuable opportunities than an identically able and motivated child from a middle-class background.⁶⁵

Unlike the principle of basic liberties, the principle of fair equality of opportunity does not have obvious implications for the just arrangement of work. It does not provide grounds upon which to object to workplaces that involve certain kinds of relationships, for example. Instead, in prohibiting inequalities in occupational opportunities that reflect things other than differences in talents and the willingness to use them, the principle is concerned primarily with the distribution of different kinds

⁶³ Rawls, *Justice as Fairness*, 44.

⁶⁴ Rawls, *A Theory of Justice*, 57; and Rawls, *Justice as Fairness*, 67, n. 35.

⁶⁵ *Ibid.*, 63.

of jobs. The principle regulates individuals' access to the job market but not the arrangement of different jobs as such.

It is worth emphasising two features of the principle of fair equality of opportunity. First, it is in one way a very ambitious principle, in the sense that it has priority, indeed perhaps even lexical priority, over the difference principle. On this view, we cannot turn our attention towards the difference principle until we have done all that we can to neutralise the effects of an individual's social environment on her prospects for success. Second, the principle is in another way a very modest principle. Its modesty extends in two dimensions. First, whilst it demands equality of opportunity amongst individuals who share the same biological endowments and life plans, it says nothing about how valuable those opportunities should be in absolute terms. Second, the principle of fair equality of opportunity does not govern the distribution of opportunities amongst individuals who have different biological endowments and/or different life plans. Accordingly, it says nothing about how much more or less valuable the opportunities should be for individuals with higher or lower levels of biological endowment. According to justice as fairness, these are issues that we must resolve by referring to other principles of justice, including the difference principle.⁶⁶

A crucial ambiguity remains, however. When the principle of fair equality of opportunity demands equality of opportunity amongst some set of individuals, with which opportunities is the principle concerned? There are two possibilities. According

⁶⁶ Though he is not explicit about this, presumably Rawls believes that an individual with a higher level of biological endowment and/or greater willingness to use it should have greater prospects for success than an individual with a lower level of biological endowment and/or less willingness to use it. See Andrew Mason, *Levelling the Playing Field: The Idea of Equal Opportunity and Its Place in Egalitarian Thought* (Oxford: Oxford University Press, 2006), 71. See also Zoltan Miklosi, 'How Does the Difference Principle Make a Difference?', *Res Publica*, 16 (2010), 263-80 at 75-7.

to the *wide principle of fair equality of opportunity*, the principle governs the distribution of a wide set of social primary goods, including opportunities for advantaged social positions, income, and wealth, for example. For simplicity, I shall say that the wide principle of fair equality of opportunity governs the distribution of opportunities for ‘advantage’. The principle demands that a child from a working class background should enjoy no less valuable opportunities for advantage than an identically able and motivated child from a middle-class background.

By contrast, the *narrow principle of fair equality of opportunity* governs the distribution of a narrow set of social primary goods, namely opportunities for advantaged social positions. On this view, the principle demands that a child from a working class background should enjoy no less valuable opportunities for advantaged social positions than an identically able and motivated child from a middle-class background.⁶⁷ The distinctiveness of the wide principle of fair equality of opportunity depends upon us being able to distinguish the idea of advantage social positions from other components of advantage.

I shall begin with the wide principle of fair equality of opportunity. This principle is a meritocratic principle in that, whereas inequalities in opportunities for advantage between individuals are unjust when they reflect *social* differences, such as differences in social class, inequalities in opportunities for advantage between individuals may be just when they reflect *natural* differences, such differences in genetic endowments.⁶⁸ If correct, this yields the result that we have a weighty reason – indeed,

⁶⁷ Rawls, *A Theory of Justice*, 72; Shiffrin, ‘Race, Labor, and the Fair Equality of Opportunity Principle’, 1665; Mason, *Levelling the Playing Field*, 82-3; and Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989), 167-9.

⁶⁸ See Matthew Clayton, ‘Education’, in Serena Olsaretti (ed.), *The Oxford Handbook of Distributive Justice* (Oxford: Oxford University Press, forthcoming); and Mason, *Levelling the Playing Field*, 68 and 79.

a duty – to neutralise the effects of an individual's social environment on her opportunities for advantage, as measured in terms of advantaged social positions, income, and wealth, for example. Institutionally speaking, there are many ways in which we can seek to achieve this. For instance, we could provide educational subsidies to children from lower social classes in order to counterbalance the social privilege conferred on children from higher social classes.⁶⁹

An adequate defence of the wide principle of fair equality of opportunity faces two formidable challenges. First, in order to meet the *asymmetry challenge*, a defender of the principle must explain why an inequality in opportunities for advantage is unjust when it reflects social differences, but not necessarily unjust when it reflects natural differences. Second, in order to meet the *priority challenge*, she must explain why we must satisfy the wide principle of fair equality of opportunity before we turn our attention towards the difference principle.

Let's begin with the asymmetry challenge. In order to meet this challenge, Rawls appeals to the idea of fairness and, in particular, to the idea that it is unfair for an individual from a lower social class to enjoy less valuable opportunities for advantage than an identically able and motivated individual from a higher social class, purely on the grounds that she comes from a lower social class. The injustice of such a scheme, he adds, resides in the fact that 'it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view'.⁷⁰ This argument is insufficient to meet the asymmetry challenge. This is because, in order to meet this challenge, a defender of the principle must explain *both* why it is unjust to permit inequalities in opportunities for advantage that reflect social differences *and* why it is

⁶⁹ Arneson, 'Equality of Opportunity: Derivative not Fundamental', 318-19; and Robert Taylor, 'Self-Realization and the Priority of Fair Equality of Opportunity', 334-5.

⁷⁰ Rawls, *A Theory of Justice*, 63.

not necessarily unjust to permit inequalities in opportunities for advantage that reflect natural differences. The claim to which Rawls draws our attention does nothing to support the second claim. Even worse, it in fact provides grounds by which to cast doubt on it. If we have a weighty reason to neutralise the effects of social differences on an individual's opportunities for advantage, because social differences are merely matters of good or bad luck, then do we not also have a weighty reason to neutralise the effects of natural differences on an individual's opportunities for advantage, since these differences too are also merely matters of good or bad luck?⁷¹ In this respect, the appeal to fairness renders the asymmetry challenge even more acute. This idea is closely associated with luck egalitarianism.⁷²

In order fully to meet the asymmetry challenge, it is necessary to explain why we must treat inequalities in opportunities for advantage that arise from natural difference differently to inequalities in opportunities for advantage that arise from social differences. One possible answer appeals to the idea of responsibility. On this view, we have an especially weighty reason to neutralise the effects of social differences on an individual's opportunities for advantage, since society is in an important sense responsible for these inequalities. The same is not true, so the argument goes, for inequalities in opportunities for advantage that reflect natural differences. This answer

⁷¹ Taking the terms used in Thomas Nagel, 'Justice and Nature', *Oxford Journal of Legal Studies*, 17 (1997), 303-21, Matthew Clayton asks, 'if it is unjust to allow 'silver spoons' to confer relative educational and occupational advantage, why isn't it also unjust to allow 'golden genes' to confer it?' See Clayton, 'Education'. See also Richard Arneson, 'Against Rawlsian Equality of Opportunity', *Philosophical Studies*, 93 (1999), 77-112; and Brian Barry, 'Equal Opportunity and Moral Arbitrariness', in Norman Bowie (ed.), *Equal Opportunity* (Boulder and London: Westview Press, 1988), 23-44.

⁷² For discussion of the central themes of this view, see G. A. Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, ed. Michael Otsuka (Princeton: Princeton University Press, 2011), chs 1-6.

makes use of the idea that an individual has a complaint that concerns fair equality of opportunity only if her society is responsible for the inequality in question.⁷³ Robert Taylor offers, though does not endorse, this kind of argument:

Perhaps social but not natural inequalities prevent us from being full and equal participants in the basic structure of a well-ordered society or cause special injury to the self-respect of those denied fair opportunities, owing to the fact that social inequalities seem more a product of conscious human action and even human design than natural inequalities.⁷⁴

One problem with this response is that society is similarly responsible for inequalities in opportunities for advantage that reflect natural differences. Even if society is not responsible for the distribution of genetic endowments, it is responsible for the way in which differences in genetic endowments – that is, natural differences – give rise to inequalities in opportunities for advantage.⁷⁵ Through the way in which it arranges its social institutions, society is responsible for the fact that an individual with a talent for playing football tends to enjoy more valuable opportunities for advantage than other individuals who lack this talent. The underlying point is similar to one made by Jean-Jacques Rousseau, who notes that, though society is not responsible for natural disasters, the distribution of harmful effects of natural disasters largely depends on social circumstances for which society is responsible, such as the quality of housing.⁷⁶

⁷³ Nagel, 'Justice and Nature'.

⁷⁴ Taylor, 'Self-Realization and the Priority of Fair Equality of Opportunity', 346; and Nagel, 'Justice and Nature'.

⁷⁵ Kasper Lippert-Rasmussen, 'Are Some Inequalities More Unequal than Others? Nature, Nurture, and Equality', *Utilitas*, 16 (2004), 193-219.

⁷⁶ Jean-Jacques Rousseau, *The Discourses and Other Early Writings* (Cambridge: Cambridge University Press, 1997 [1756]), 232-46. See also Neuhaus, *Rousseau's Critique of Inequality*, 66, n. 7.

Even if a defender of the wide principle of fair equality of opportunity were to succeed in meeting the asymmetry challenge, she must also meet the priority challenge, which is to establish the priority of the wide principle of fair equality of opportunity over the difference principle. This challenge alleges that it is implausible to grant the former priority over the latter, since this might require us to devote resources to neutralising the effects of social differences on an individual's opportunities for advantage, rather than to use these resources in the service of the difference principle. In support of the priority challenge, we may ask the following question: Why ought we to use resources to ensure that a child from a middle-class background fares as well as an identically able and motivated child from an upper-class background, rather than to use the same resources in a way that benefits the worst off?⁷⁷

This challenge is even more acute for Rawls, who attaches lexical priority to the principle of fair equality of opportunity over the difference principle. This is because, if we are to grant a significant degree of priority to the wide principle of fair equality of opportunity, we must conclude that we ought to devote large sums of resources to neutralising the potentially very small effects of social differences on an individual's opportunities for advantage, rather than to use these resources much more efficiently in the service of the difference principle. Again, we may ask the following question: Why ought we to use large sums of resources to ensure that a middle-class child fares as well as an identically able and motivated child from an upper-class background, rather than to use the same resources in a way that greatly benefits the very worst off in society?

It may be possible to amend the wide principle of fair equality of opportunity in such a way that avoids this objection. This amendment requires that we interpret

⁷⁷ Arneson, 'Equality of Opportunity', 318-19.

this principle as a *maximin* principle, not an egalitarian principle.⁷⁸ On this view, we may permit social differences to affect an individual's opportunities for advantage when doing so is necessary to benefit the position of the least advantaged. Accordingly, we may permit a middle-class child to fare less well than an identically able and motivated child from an upper-class background when doing so is necessary to benefit the very worst off in society. This amendment enables a defender of the principle to avoid the priority challenge.

However, if we were to accept this amendment, we would greatly reduce the significance of the wide principle of fair equality of opportunity. After all, if we permit social differences to affect an individual's opportunities for advantage whenever doing so is necessary to benefit the position of the least advantaged, we may end up allowing many social differences greatly to affect an individual's opportunity for advantage. This is because we would always be permitted to use resources in the service of the difference principle rather than devote them to neutralising the effects of social differences. In summary, whilst this response may provide a response to the priority challenge, it does so at a considerable cost to the principle's significance.⁷⁹

I have argued that the asymmetry challenge is fatal and that the priority challenge, though surmountable, is none the less a serious obstacle to any adequate defence of the wide principle of fair equality of opportunity. Together, these challenges provide us with a compelling argument to abandon the wide principle of fair equality of opportunity, and to search for alternative principles.

⁷⁸ See Joseph Fishkin, *Bottlenecks: A New Theory of Equal Opportunity* (Oxford: Oxford University Press, 2014), 10, n. 24; Pogge, *Realizing Rawls*, 166-70; and, for further discussion, see Matthew Clayton, 'Rawls and Natural Aristocracy', *Journal of Croatian Philosophy*, 1 (2003), 239-59 at 242, n. 8.

⁷⁹ For discussion of further complications, see Pogge, *Realizing Rawls*, 170.

3.7 The Principle of Fair Equality of Opportunity, Again

Let's now turn to the narrow principle of fair equality of opportunity. This principle demands that we secure equality of opportunity for advantaged social positions amongst individuals who share the same biological endowments and life plans. The principle is meritocratic in the sense that, whereas inequalities in opportunities for advantaged social positions are unjust when they reflect social differences, inequalities in opportunities for advantaged social positions may be just when they reflect natural differences. However, since the narrow principle of fair equality of opportunity does not govern the distribution of other components of advantage, such as income and wealth, its implications are less thoroughly meritocratic than the wide principle of fair equality of opportunity.

It is tempting to begin by defining 'advantaged social positions', since the meaning of this term no doubt affects the principle's plausibility. In particular, it is important to distinguish opportunities for advantaged social positions from opportunities for advantage, since this is necessary for distinguishing the narrow principle of fair equality of opportunity from its wider counterpart. This is not how I shall proceed, however. Rather, I shall begin by examining a possible justification for the principle. We can then define 'advantaged social positions' in a way that serves the arguments that allegedly support the principle. In other words, I shall offer a functional definition.⁸⁰

⁸⁰ By contrast, Mason identifies the following sufficient independently properties of advantaged social positions: 'first, they carry with them material benefits; second, they bring with them prestige or social status; third, fulfilling their responsibilities is in itself rewarding; fourth, they are a means to secure positions that carry material benefits, or prestige or social status, or which are such that fulfilling their responsibilities is in itself rewarding'. See Mason, *Levelling the Playing Field*, 16.

I shall begin with Rawls's own remarks about the principle of fair equality of opportunity, since, though brief, they draw attention to considerations that are of interest. Commenting on the principle, he says that it:

expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office but *because they were debarred from experiencing the realization of self which comes from a skilful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.*⁸¹

This passage suggests a defence of the narrow principle of fair equality of opportunity that appeals to the interest in self-realization. This interest, Rawls adds, is 'one of the main forms of human good' and, crucially, a good that is more valuable than other components of advantage, such as income and wealth. Reflecting on the institutional implications of this, Rawls states that it is imperative to design our social institutions in a way that protects each individual's interest in self-realization, since, 'otherwise human beings will find their culture and form of life dull and empty. Their vitality and zest will fail as their life becomes a tiresome routine'.⁸² Accordingly, we must define advantaged social positions as positions that are conducive to such self-realization.

If this fact provides a sound basis upon which to affirm the narrow principle of fair equality of opportunity, the subsequent task for a defender of the principle is to establish the priority of an individual's interest in self-realization, over her interest in opportunities for other components of advantage. Showing this to be the case is important for it establishes the possibility that we should use a different principle to

⁸¹ Rawls, *A Theory of Justice*, 73 [emphasis added].

⁸² Ibid., 377.

govern the distribution of opportunities for advantaged social positions than the principle that governs the distribution of opportunities for other components of advantage.⁸³

To support this conviction, we could appeal to the Aristotelian Principle, according to which ‘other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater the complexity’.⁸⁴ A familiar worry with this appeal is that it looks to be inconsistent with the demands of anti-perfectionism.⁸⁵ To claim that an individual’s interest in opportunities for advantaged social positions is prior to her interest in certain other opportunities, such as her interest in income and wealth, is to make a controversial claim of the kind that violates the liberal principle of legitimacy. As I noted in section 2.3.1, we can circumvent this objection if we interpret the Aristotelian Principle as making an empirical, rather than normative, claim. On this view, an individual’s interest in opportunities for advantaged social positions is an ambition-based interest. This defence of the narrow principle of fair equality of opportunity relies upon a claim about the priority that individuals in general attach to opportunities for advantaged social positions under the right conditions. This problem with this response is that, as an empirical claim, the Aristotelian Principle is false. Though many individuals attach some importance to opportunities for advantaged social positions, for many people this may readily be defeated by the concern for other opportunities for other components of advantage, such as income and wealth.⁸⁶

⁸³ Taylor, ‘Self-Realization and the Priority of Fair Equality of Opportunity’, 337; Pogge, *Realizing Rawls*, 167.

⁸⁴ Rawls, *A Theory of Justice*, 374.

⁸⁵ Arneson, ‘Equality of Opportunity’, 320.

⁸⁶ *Ibid.*, 320-1.

There is a more fundamental problem with the narrow principle of fair equality of opportunity. Even supposing that an individual's interest in opportunities for advantaged social positions is prior to her interest in income and wealth, this fails to justify the principle. This is because, as several commentators note, if opportunities for advantaged social positions are of great importance, then surely we should strive to provide every individual with opportunities for advantaged social positions, and not strive simply to guarantee fair procedures in competitions that give opportunities for advantaged social positions to some but not to others.⁸⁷ In other words, if opportunities for advantaged social positions are of great importance, then surely we have a weighty reason to intervene in the internal life of a firm in order to ensure that each worker has opportunities for self-realization. This point casts further doubt on the acceptability of the narrow principle of fair equality of opportunity.

To conclude, let me note that that it is difficult to provide a thorough analysis of the principle of fair equality of opportunity. This is mainly because it contains several ambiguities, it has been defended in several different ways, and its relationship to the difference principle is a complex one. It is therefore difficult to prove that we should reject the principle. Instead, I have sought merely to cast doubt on its force, which then serves as a challenge to its relevance to an account of justice in work.

3.8 The Difference Principle

When theorising about how we should distribute society's burdens and benefits, Rawls begins by considering a society characterised by strict equality, such that there are no inequalities between individuals in the distribution of social primary goods. This

⁸⁷ Arneson, 'Equality of Opportunity', 321; and Mason, *Levelling the Playing Field*, 87-8.

possibility has considerable intuitive appeal and, partly for this reason, represents the baseline against which we must justify social and economic inequalities. Significantly, though, Rawls believes that some departures from this baseline may be justifiable. In particular, he writes:

Society should take into account economic efficiency and the requirements of organization and technology. If there are inequalities in income and wealth, and differences in authority and degrees of responsibility, that work to make everyone better off in comparison with the benchmark of equality, why not permit them?⁸⁸

On the basis of this, Rawls affirms the difference principle, which holds that social and economic inequalities, measured in terms of a range of social primary goods, are ‘to be to the greatest benefit of the least-advantaged members of society’.⁸⁹

I should add four qualifications to this claim. First, the difference principle does not say that we are required by justice to accept inequalities that make everyone better off in comparison with the benchmark of equality. Rather, justice permits these inequalities.⁹⁰ Second, according to the difference principle, a given level of inequality is just only if there is no alternative arrangement under which the least advantaged fare better.⁹¹ Third, the difference principle is silent with respect to whether or not the inequalities it sanctions are in some sense regrettable, even though just.

⁸⁸ Rawls, *A Theory of Justice*, 130-1.

⁸⁹ Rawls, *Justice as Fairness*, 42-3.

⁹⁰ I put to one side the many complications discussed in Andrew Williams, ‘The Revisionist Difference Principle’, *Canadian Journal of Philosophy*, 25 (1995), 257-81.

⁹¹ The difference principle defines the least advantaged anonymously, such that an inequality is not necessarily unjust if, for a given disadvantaged individual, there is an alternative arrangement under which she fares better. What matters is that no alternative arrangement under which the least advantaged fare better, whoever they may be.

Finally, the difference principle does not govern the distribution of all social primary goods. This is because prior principles, such as the principle of basic liberties, govern the distribution of some social primary goods. For example, the difference principle would not recommend increasing the position of the least advantaged if we could achieve this only via the use of means that deny some individuals the social bases of self-respect, and thus violate the principle of basic liberties. Relatedly, some claim that the difference principle governs the distribution of income and wealth only, such that it concerns the position of the least advantaged measured in terms of income and wealth alone. This is inaccurate. Rawls is explicit that the difference principle ranges over ‘*social* and economic inequalities’, that it applies also ‘to the design of institutions that make use of difference in authority and responsibility’,⁹² and that the social primary goods that vary in their distribution ‘are the rights and prerogatives of authority, and income and wealth’.⁹³ The difference principle governs the distribution of an index of social primary goods, including income and wealth as well as advantaged social positions or, in Rawls’s terms, powers and prerogatives of offices and positions of authority and responsibility.⁹⁴

3.8.1 The Difference Principle and a Detailed Division of Labour

Several Rawlsian theorists invoke the difference principle in order to support objections to certain arrangements of work. Arnold and O’Neill each offer arguments of this kind, which purport to establish that a *detailed division of labour* violates the

⁹² Rawls, *A Theory of Justice*, 53.

⁹³ Ibid., 80.

⁹⁴ Freeman, *Rawls*, 113.

principle.⁹⁵ A detailed division of labour obtains when ‘job complexity, responsibility, and authority [are distributed] very unequally across producers’.⁹⁶ This distribution of work arises in hierarchical organisations and undemocratic organisations, as well as perhaps other kinds of organisations. It is the kind of organisation of work that is advocated by economists and engineers such as Frederick Taylor.⁹⁷

A detailed division of labour is interesting from the Rawlsian perspective for at least two reasons. First, in virtue of distributing responsibility and authority very unequally, a detailed division of labour produces unequally advantaged social positions. This is significant because, as I earlier noted, advantaged social positions feature in the index of social primary goods whose distribution is subject to evaluation by the difference principle.⁹⁸ Thus, in order for a detailed division of labour to be just, these social inequalities must be distributed in a way that satisfies the difference principle.⁹⁹

Second, a detailed division of labour distributes job complexity and variety unequally. Whereas one individual’s work involves complex and varied activities, another’s work does not. The distribution of job complexity and variety is relevant for two reasons. First, drawing upon my remarks in section 2.4.2, we should note that unskilled, repetitive, and simple work can threaten self-respect because the worker may internalise the idea that she is not a responsible agent – that she is a cog in a machine,

⁹⁵ Arnold, ‘The Difference Principle at Work’; and O’Neill, ‘Three Rawlsian Routes Towards Economic Democracy’.

⁹⁶ Arnold, ‘The Difference Principle at Work’, 109.

⁹⁷ Frederick Taylor, ‘Principles of Scientific Management’ (Sioux Falls, SD.: Nuvision Press, 2007 [1911]).

⁹⁸ It is noteworthy that, for Rawls, one reason why social inequalities are bad is because they make ‘peoples’ lives less good than they might otherwise be’. See Rawls, *Justice as Fairness*, 131.

⁹⁹ Arnold, ‘The Difference Principle at Work’, 108.

so to speak. To this extent, we can explain the injustice of this feature of a detailed division of labour by referring to the principle of basic liberties, rather than by referring to the difference principle. This is because it is stipulated that the principle of basic liberties is sufficient to satisfy each individual's interest in the social bases of self-respect.

Second, as Arnold argues, it may be that job complexity and variety is itself a distinct social primary good.¹⁰⁰ Job complexity and variety is distinct from advantaged social positions in that, whereas the former concern intellectual demandingness, the latter concerns positions of authority and responsibility. Moreover, job complexity and variety seems also to pass both the all-purpose means test and the publicity test. Or, more precisely, job complexity and variety seems to fare as well with respect to these tests as other social primary goods, including income and wealth. Regarding the all-purpose means test, job complexity and variety is a property that to which many individuals attach some importance; and, regarding the publicity test, though there may be some debate about precisely which properties make one job more complex and varied than another, it is clear that, whichever set of properties we settle on, their distribution will be publicly verifiable. If we are correct to treat job complexity and variety in the same way as income and wealth, then similarly the demands of the difference principle should be sensitive to its distribution also.

It is clear, then, that a detailed division of labour produces inequalities that are relevant to the difference principle. In order for a detailed division of labour to be just, therefore, these inequalities must maximally serve the interests of the least advantaged. One way in which a defender of a detailed division of labour may seek to justify these inequalities is by pointing to the efficiency gains that a detailed division of labour

¹⁰⁰ Ibid., 101-3.

makes possible.¹⁰¹ The argument goes as follows: though a detailed division of labour produces unequally advantaged social positions and reduces job complexity and variety, the system maximally benefits the position of the least advantaged because it generates economic gains that are made possible by a detailed division of labour only.¹⁰² Moreover, these economic gains are said to compensate for the unequally advantaged social positions and reduced job complexity and variety that the detailed division of labour brings about.

There are at least two problems with this argument. First, in many industries, it is not clear that a detailed division of labour produces any economic gains. John Tomasi, who is sympathetic to this argument, concedes that ‘New more flexible forms of workplace management are replacing the rigid, hierarchical structures of the factory system’.¹⁰³ Clarifying this idea, he adds:

the workplace cultures of high-technology enterprises such as Apple Inc. or high-flying start-ups such as Google are famous for encouraging creativity and innovation. Within western societies, the old industrial capitalism is being supplanted by more decentralized and micro-market-orientated forms of capitalism....In this new economy, increases in value tend to be the result of innovation driven primarily by creative individuals and teams, rather than simply the product of machines and unskilled workers backed by massed capital.¹⁰⁴

¹⁰¹ Tomasi, *Free Market Fairness*.

¹⁰² Arnold, ‘The Difference Principle at Work’, 109.

¹⁰³ Tomasi, *Free Market Fairness*, 64-5. In support of this, Tomasi cites: Arnold Kling and Nick Schulz, *From Poverty to Prosperity: Intangible Assets, Hidden Liabilities, and the Lasting Triumph over Scarcity* (New York: Encounter Books, 2009); and John Roberts, *The Modern Firm: Organisational Design for Performance and Growth* (New York: Oxford University Press, 2007). See also John Budd, *Employment with a Human Face: Balancing Efficiency, Equity, and Voice* (Cornell: Cornell University Press, 2004).

¹⁰⁴ Tomasi, *Free Market Fairness*, 64-5.

In other words, economic gains often go hand-in-hand with both equally advantaged social positions and high levels of job complexity and variety. When this is the case, it is not necessary to introduce further social inequalities and/or to reduce job complexity and variety in order to make possible economic gains. When this is the case, a detailed division of labour is unjust, according to the difference principle.

Though compelling in some industries, this response will not be compelling in all industries. In many industries, that is, economic gains are made possible only by introducing measures that produce unequally advantaged social positions and reduce job complexity or variety.¹⁰⁵ For this reason, we need a second response. This response acknowledges that a detailed division of labour sometimes produces economic gains, but it denies that these gains are *sizeable*, or, more specifically, it denies that they are of *sufficient size* to defeat the specified losses. In many cases it will be preferable to take a hit to economic efficiency, understood in terms of the production of material resources, when doing so is necessary to protect against introducing further social inequalities and/or reducing job complexity and variety.

In support of this conclusion, Arnold asks us to consider having to choose between the following:

a simple, unskilled job nestled in the base of a towering, undemocratic pyramid of command, but which pays pretty well; or a lower-paying job that activates your judgment, calls upon your capacities for self-government and sociability, and develops in you a range of skills and abilities that transfer to a host of non-work activities?¹⁰⁶

¹⁰⁵ In fact, Tomasi's point is not even true in the case of Apple Inc. and high-flying start-ups such as Google, once we factor in their global operations and assemblers in, say, China, which in many cases make extensive use of a detailed division of labour.

¹⁰⁶ Arnold, 'The Difference Principle at Work', 114.

Faced with this choice, we can safely assume that most people would opt for the latter job. In order to ensure that this is the case, we could further stipulate that the inequality in pay between the two jobs is very small. When this is the case, the vast majority of individuals would forego the economic gains associated with a detailed division of labour in order to protect against its associated losses. This result makes use of the idea that the difference principle tracks an *index* of social primary goods rather than only income and wealth (though I shall say more about this in the next section).

I have outlined two responses to those who defend a detailed division of labour on the grounds that the economic gains it makes available adequately compensate for the losses in terms of other goods that it produces. The first response denies that a detailed division of labour is necessary to produce these economic gains. This response is compelling in some, but not all, cases. The second response states that, even when the first response is not compelling, the economic gains made possible by a detailed division of labour do not adequately compensate for the losses it produces. An implication of this is that a detailed division of labour is unjust according to the difference principle. This conclusion is important as it illustrates one way in which the difference principle yields conclusions that are of specific relevance to an account of justice in work.

3.8.2 Extending the Difference Principle

We can extend the difference principle further in order to yield more determinate recommendations regarding the just arrangement and distribution of work. One possibility is to include within the index of social primary goods a concern for discretionary time. Though Rawls expresses sympathy with this idea, Julie Rose

presents the most sustained case in defence of this move.¹⁰⁷ She begins by noting that discretionary time is equally as generally necessary for the effective pursuit of one's ambitions as material resources, such as income and wealth.¹⁰⁸ This ensures that discretionary time passes the all-purpose means test.

Discretionary time also passes the publicity test. Though we lack sufficient information to be able to make fine-grained judgments in a range of cases, it is often clear which individuals have more or less discretionary time. An individual who has to hold down two or three jobs in order to make ends meet clearly has less discretionary time compared to a very wealthy individual who retires in her thirties. If discretionary time is as epistemically accessible as I suggest, then we may attribute to it the same status that we attribute to other social primary goods, such as income and wealth.

We can accept Rose's central claim – a claim about the how discretionary time should figure within the index of social primary goods whose distribution is governed by the difference principle – without having to accept her specific account of discretionary time. In particular, I mean to focus on Rose's definition of discretionary time as time 'when one is not engaged in activities that are objectively necessary to meet one's own, *or one's dependents*', basic needs'.¹⁰⁹ For the purposes of operationalising the difference principle, it may be relevant that some people with dependents are responsible for having them, and this may weaken or cancel their claims on resources that are supported by their lack of discretionary time. It is possible that the distribution of discretionary time would be unjust, according to the difference principle, were it not for the fact the victim of the putative injustice is responsible for her condition.

¹⁰⁷ Rose, 'Money Does Not Guarantee Time'. See also Rawls, 'Reply to Musgrave and Alexander', 654; and Rawls, *Justice as Fairness*, 179.

¹⁰⁸ Rose, 'Money Does Not Guarantee Time', 442.

¹⁰⁹ *Ibid.*, 439 [emphasis added].

Including discretionary time within the index of social primary goods provides additional resources by which to condemn as unjust certain arrangements and distributions of work. In particular, it suggests that an otherwise just arrangement and distribution of work is unjust when it distributes discretionary time in a way that violates the difference principle. The principle may therefore provide a basis by which to support measures that regulate the distribution of discretionary time, such as working time directives, perhaps. This conclusion illustrates a further way in which the difference principle yields conclusions that are of specific relevance to an account of justice in work.

3.9 The Index Problem

The difference principle is vulnerable to a number of powerful objections. Some of these objections focus on the principle's structure, and, in particular, on the implication that we ought to provide a very small benefit to the least advantaged rather than to provide a much larger benefit to other individuals. A second set of objections challenge the principle's use of social primary goods, and, in particular, on the idea that we ought to determine an individual's entitlements by reference to this metric. I shall not press these objections now, in part because I develop objections of this kind in the next chapter. Instead, I offer an alternative objection that focuses on the difference principle's reliance upon an *index* of social primary goods.

The difference principle governs the distribution of an index of social primary goods, which, as I have presented it, is comprised of a variety of goods, including income and wealth, advantaged social positions, job complexity and variety, and discretionary time. On this basis, proponents of the difference principle sanction the rejection of a detailed division of labour as well as advocate the introduction of

working time directives or other policies that have similar effects. The reason for this, they contend, is that these interventions in the job market clearly enhance the position of the least advantaged, measured in terms of an index of social primary goods.

A first objection to the difference principle challenges the grounds upon which its proponents conclude that certain arrangements and distributions of work are unjust. To illustrate this worry, it is helpful to return to Arnold's claim that it is better to forgo a small increase in wages in order to have a job that scores much more highly in terms of other social primary goods. Against this, we may ask: why is Arnold entitled to draw this conclusion? After all, he cannot rely upon a claim about what is objectively better for individuals, since claims of this kind are inconsistent with the liberal principle of legitimacy, nor can he rely upon individuals' preferences, since Rawlsians explicitly reject preference-satisfaction as an appropriate aim of justice.

I want, though, to focus my attention on a more politically significant objection to the difference principle. Though its proponents maintain that it is clear which arrangements and distributions of work we ought to *reject* as unjust, it is much less clear which arrangements and distributions of work we ought to *accept* as just. This is a consequence of the *index problem*.¹¹⁰ The index problem arises because the difference principle requires us to make judgments concerning the relative weightings of distinct social primary goods.¹¹¹ To illustrate the problem, let's consider a policy that increases the amount of discretionary time enjoyed by the least advantaged, but only by reducing their level of income and wealth. Putting aside my earlier reservations, when the increase in discretionary time is particularly large, and the decrease in income and

¹¹⁰ Richard Arneson, 'Primary Goods Reconsidered', *Notas*, 24 (1990b), 429-54.

¹¹¹ Ronald Dworkin similarly notes that the principle 'is not sufficiently fine-tuned' and that there is a 'degree of arbitrariness in the choice of any description of the worst-off group'. See Dworkin, *Sovereign Virtue*, 113.

wealth is particularly small, it may be clear that the difference principle justifies this policy. However, when this is not the case, it is not clear whether the policy advances or reduces the position of the least advantaged. Accordingly, it is not clear whether the difference principle justifies this policy. This lack of clarity in the recommendations that the difference principle originates from the necessity of ‘judging complex trade-offs between different elements of the bundle of social primary goods’.¹¹²

The index problem cuts deeper than it may first appear. The point is not merely that there is an epistemic difficulty in determining who the least advantaged are and how best to improve their situation. Perhaps this problem could be overcome by the use of averaging, say. Rather, as Arneson points out, the point is that ‘Even if the agency responsible for implementing [the difference principle] had complete knowledge of all pertinent information, she still would not know how to arrange institutions to satisfy a primary goods standard, in the absence of an index’.¹¹³ At the heart of the index problem, therefore, is the claim that the difference principle is insufficiently fine-tuned to be able to yield helpful institutional recommendations in a range of cases. Given how the justness of so many work-related policies depends upon judgments concerning the relative weightings of distinct social primary goods, this problem is a particularly pressing one.¹¹⁴

There are three ways in which a defender of the difference principle may respond to the index problem. First, we may stipulate the relative weightings of distinct social primary goods. For example, we could stipulate that an increase in discretionary

¹¹² O’Neill, ‘Three Rawlsian Routes Towards Economic Democracy’, 52.

¹¹³ Arneson, ‘Primary Goods Reconsidered’, 446.

¹¹⁴ Rawls concedes that in these cases ‘we admittedly rely upon intuitive estimates. But this cannot be avoided entirely’. See Rawls, *A Theory of Justice*, 80. However, it is not clear why he believes this to be a satisfactory response.

time from 30 hours a week to 35 hours a week is equivalent to an increase in annual salary from £25,000 to £27,000. This approach is unsatisfactory. This is because it risks either being arbitrary or violating the demands of anti-perfectionism. If there is no argument in defence the weightings, then the stipulations are arbitrary, and hence lack a justification. If we arrive at the weightings by appeal to an account of well-being, then the justification will be one that is reasonably rejected by certain individuals, and hence results in an abandonment of anti-perfectionism.

O'Neill suggests a second response. He claims that we can overcome the index problem 'through the deliberations of democratic processes at the legislative stage of government'.¹¹⁵ That is, democracy provides our answer. The problem with this solution, however, is that it conflates justice and legitimacy. Whilst it may be legitimate to implement a democratically-mandated policy, it does not follow that this policy is just. Accordingly, an appeal to democracy cannot help us to answer the question of what justice demands. In so far as we are interested in just, rather than legitimate, arrangements and distributions of work, therefore, this response is unhelpful. Moreover, justice as fairness aims to give guidance to each individual about how to exercise her political influence. The theory would abrogate its responsibility to offer this guidance if it were to say nothing other than that the just policy is one that arises from a democratic process.

In reply, a proponent of the difference principle could maintain that there is no single just outcome and, perhaps, that a range of policies that could arise from a democratic process are all just.¹¹⁶ If this were the case, justice as fairness would not abrogate its responsibility to offer guidance to each individual, since all policies

¹¹⁵ O'Neill, 'Three Rawlsian Routes Towards Economic Democracy', 52; and Hockett and Risse, 'Primary Goods Revisited'.

¹¹⁶ I thank Martin O'Neill and Julie Rose for suggesting this response and for pressing me on this issue.

(perhaps within a given range) qualify as just. This is the third response. The problem with this response is that we should not think of these kinds of disagreements in this way. When two individuals debate the justness of a given policy, each thinks that the other is wrong. The present response cannot explain this. On this view, debates about the justness of a given policy are like debates about the best flavour of ice-cream, where both could be correct. This cannot be right.

In summary: even if the difference principle could overcome my initial worry and therefore plausibly identify certain ways in which arrangements and distributions of work can be unjust, the principle is insufficiently fine-tuned to be able to help us determine which social institutions we should accept as just. Moreover, it is not clear how we can overcome this index problem in a principled and plausible way.

3.10 Conclusion

Given the length and variety of this chapter, it may help for me to offer a brief summary of its headline conclusions. I began with a defence of the principle of basic liberties, from which I then derived three basic rights that all individuals share: the basic right against relationships of servility, the basic right to the social bases of self-respect, and the basic right to be treated as an equal. Each of these generates very weighty reasons – indeed, duties – to regulate the internal lives of firms. I did not address the institutional question that concerns the form that this regulation should take.

The principle of basic liberties and the basic rights it justifies form a crucial part of our account of justice in work, such that arrangements and distributions of work that are inconsistent with these demands are gravely unjust. The seriousness of

these injustices reflects the great weight of the interests that underpin basic rights. Having said this, the principle of basic liberties by no means fully determines the social institutions that ought to govern society's arrangement and distribution of work. The principle acts as a coarse sieve, if you will: it helpfully filters out certain unjust arrangements and distributions of work, but it fails to provide us with adequate theoretical resources to select between those remaining arrangements and distributions of work.

This limitation to the principle of basic liberties should not trouble us. Instead, it should prompt us to examine additional principles of justice that provide grounds for selecting between those options that are consistent with the principle of basic liberties – that is, that get through the coarse sieve, if you will. At this point, Rawlsians advocate the principle of fair equality of opportunity and, then, the difference principle. The former claims to supply us with reasons to object to distributions of work that allow an individual's prospects to depend upon things other than her talents and willingness to use them; and the latter claims to supply us with reasons to object to social and economic inequalities at work that fail to benefit the least advantaged. However, neither of these principles is compelling, and thus neither should feature in our account of justice in work. My arguments against these principles are multifarious and, in some cases, complex. For these reasons, I shall not rehearse them again here.

In the light of this, I propose that we consider an alternative mechanism for selecting between those arrangements and distributions of work that are consistent with the principle of basic liberties. This is the challenge that I take up in the next few chapters. More specifically, my aim is to defend an approach that shows fidelity to the values that motivate Rawls's project, but that is invulnerable to the particular objections that I have pressed against the principle of fair equality of opportunity and the difference principle.

4 Taking the Envy Test Seriously

How, then, are we to select between those arrangements and distributions of work that are consistent with the principle of basic liberties? My answer unfolds in two stages. First, I begin by developing an account of occupational disadvantage. The challenge is to develop an account that is both consistent with the demands of the liberal principle of legitimacy and independently attractive. That is my task in this chapter. Second, I then offer a theoretical model for theorising about the just response to occupational disadvantage. This model helps us to choose amongst those options that the principle of basic liberties does not filter out. This is the subject of the next chapter. To clarify things further, in chapter 6, I flesh out the implications of my conclusions by commenting on the kinds of interventions in the job market that they justify.

Throughout these chapters, my analysis is strongly influenced by the work of Dworkin. Though my principal goal is to make progress with developing an attractive account of justice in work, a secondary ambition is to explain certain features of Dworkin's thought and to show how we can integrate these within a Rawlsian framework that takes seriously anti-perfectionism. In doing so, I construct a hybrid account of justice in work that is in various places heavily indebted to both Rawls and Dworkin. For those of us drawn to both Rawls and Dworkin, this is important, since it reveals that we need not always choose between them.

To begin, it may help to clarify the kind of disadvantage with which we are concerned. After all, an individual may suffer different kinds of disadvantage: she may suffer the disadvantage that can result from wrongful discrimination,¹ the disadvantage

¹ For example, see Kasper Lippert-Rasmussen, *Born Free and Equal: A Philosophical Inquiry into the Nature of Discrimination* (Oxford: Oxford University Press, 2014), esp. ch. 6.

manifest in having her autonomy undermined,² or the disadvantage of having less valuable opportunities than another individual. I am concerned exclusively with the third kind of disadvantage, and all subsequent references to disadvantage are meant as references specifically to this kind of disadvantage.

The dominant approach within both political philosophy and public policy with respect to this topic proceeds by identifying a metric by which to determine whether an individual's opportunities are less valuable than another's. On this view, we should treat an individual as disadvantaged if and only if she has less access to an index of social primary goods, a lower level of welfare, or an objectively lower level of well-being, say.³ I shall call this the *metric test* for disadvantage.

However, there is another way in which to proceed. Rather than appealing to a metric by which to determine disadvantage, we could instead allow an individual to determine *for herself* whether or not she is disadvantaged. On the version of this view that I shall defend, we should treat an individual as disadvantaged if and only if that individual envies another's circumstances. Following Dworkin, the chief proponent of this view, I shall call this the *envy test* for disadvantage.⁴ A distinctive feature of the envy

² Ben Colburn, 'Disadvantage, Autonomy, and the Continuity Test', *Journal of Applied Philosophy*, 31 (2014), 254-70.

³ As should by now be familiar, Rawls adopts the social primary goods approach. For a defence of the welfare approach, see G. A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics*, 99 (1989), 906-44. Derek Parfit does not attempt to identify a metric for use within political morality, but instead attempts to identify a metric for use within personal ethics. None the less, it is profitable to consult his writings, since they may also serve the purpose of identifying a possible metric for use within political morality. See Parfit, *Reasons and Persons*, Appendix I.

⁴ Dworkin, *Sovereign Virtue*, chs 1, 2 and 7; and Dworkin, *Justice for Hedgehogs*, ch. 16. See also Christian Arnsperger, 'Envy-Freeness and Distributive Justice', *Journal of Economic Surveys*, 8 (1994), 155-86; and Hal Varian, 'Equity, Envy, and Efficiency', *Journal of Economic Theory*, 9 (1974), 63-91.

test is that it consults, rather than usurps, an individual's own evaluation of her circumstances. An individual can determine for herself whether or not she is disadvantaged, rather than have it determined for her by an external agent using an account of disadvantage that may not be fully consistent with what she believes.⁵ This is initially appealing for two reasons. First, it takes seriously the idea that political morality should be justifiable to every individual. Second, it guarantees the avoidance of disrespectful judgments, such as when a government treats an individual as disadvantaged even though she maintains that she is not.

I have three aims in this chapter. The first is to clarify the demands of the envy test. The second is to illuminate with greater clarity its appeal and, in particular, to explain its superiority over the metric test. The third is to rebut two seemingly powerful objections to the envy test. Overall, therefore, my goal is to offer a clear presentation and defence of the envy test. My argument begins, in section 4.1, where I provide a sketch of the envy test. In section 4.2, I then highlight its attractive liberal credentials and appeal to these to explain why we should favour it over the metric test. In section 4.3, I refine the definition 'envy' in order to guard against misinterpretation and to distinguish it from a less attractive alternative. In the remaining sections I consider and respond to two objections. In section 4.4, I deal with the *responsibility objection*, which claims that the envy test is insufficiently sensitive to the importance of responsibility. In sections 4.5 and 4.6, I respond to the *mistakes objection*, which states that we should reject the envy test on the grounds that it implausibly allows the judgment that an individual is disadvantaged to depend upon her mistaken judgments.

The eagle-eyed reader may have noticed that, though I began by referring to occupational disadvantage, I now refer to disadvantage simpliciter and, for the most

⁵ Dworkin, *Sovereign Virtue*, 294.

part, I shall continue to do so in the remainder of this chapter. The reason for this is two-fold. First, I prefer to discuss disadvantage more generally, since doing so helps to demonstrate how my approach has far-reaching implications for political morality, beyond those concerning justice in work. Second, if we have a more general account of disadvantage, it is fairly simple to derive from this an account of occupational disadvantage in particular. I return to this point in the conclusion, where I summarise the implications of this chapter's arguments for our account of justice in work.

4.1 An Overview of the Envy Test

The term 'envy' has various connotations. On one reading, which perhaps aligns with ordinary language, an individual is envious if, when she cannot (also) possess the opportunity that another enjoys, she prefers that the other individual not have it either.⁶ Understood in this way, envy is an emotion or judgment closely associated with jealousy and spite.⁷ As Elizabeth Anderson notes, this can make its use inadvisable, for it is likely both to fuel libertarian critiques of distributive justice and to foster a disrespectful culture of contempt directed at individuals regarded as sadly inferior.⁸ For these reasons, it is important precisely to specify the distinctive way in which the envy test understands envy. I do this in this section by issuing four clarifications.

First, the envy test (stipulatively) states that an individual suffers a disadvantage if and only if her opportunities are less valuable than those enjoyed by another

⁶ Nozick, *Anarchy, State, and Utopia*, 239. See also Elizabeth Anderson, 'Rethinking Equality of Opportunity: Comment on Adam Swift's How Not to be a Hypocrite', *Theory and Research in Education*, 2 (2004), 99-110 at 105.

⁷ For further discussion of the relationship between envy and jealousy, see Rawls, *A Theory of Justice*, 466.

⁸ Anderson, 'What is the Point of Equality?', 289 and 307.

individual, *as measured by her own judgments about what makes one's life go well*. Thus, it is an individual's own values that determine whether or not she is disadvantaged. We can express this component of the envy test in the following way: for an individual to envy another's opportunities, her sincerely held values must imply that her own opportunities are less valuable.⁹ This distinguishes envy as it is used by the envy test from the sense of envy criticised by Anderson.¹⁰ To clarify this, let's consider the following case:

Talent: Due to the high marketability of her natural talents, Lucky enjoys a wide range of opportunities to which she attaches considerable value. By contrast, and due to the lack of marketability of her natural talents, Unlucky does not. Unlucky regards Lucky's opportunities as more valuable than her own.

Since Unlucky regards Lucky's opportunities as more valuable than her own, she counts as disadvantaged, according to the envy test. The fact that Unlucky is (or is not) disadvantaged according to some objective account of well-being, say, affects this result only in so far as it affects Unlucky's own judgments about the value of her opportunities. This feature of the envy test may strike some readers as counter-intuitive. It is therefore imperative to explain and to justify this result in subsequent sections.

Second, the envy test concerns individuals' initial opportunities.¹¹ In a variation on *Talent* in which Lucky recklessly wastes her opportunities and, subsequently, comes to regard Unlucky's opportunities as more valuable than her own, Lucky's recklessly-generated envy does not register as producing the kind of disadvantage in which we are

⁹ By 'value', I mean 'comparative value'.

¹⁰ Ronald Dworkin, 'Sovereign Virtue: Revisited', *Ethics*, 113 (2002), 106-43 at 117, n. 19.

¹¹ For discussion of this issue, see Mason, *Levelling the Playing Field*, 73-6.

interested. We can justify this result by appealing to the familiar idea that, we should hold an individual responsible for the consequences of her own actions.¹²

The task of determining when an individual is responsible for bringing about an outcome is a complicated one. Broadly speaking, the envy test states that an individual should be held (fully) responsible for bringing about an outcome if and only if she stands in the appropriate relation to the cause of that outcome. This requires the satisfaction of two conditions. The first condition, which is the *psychological condition*, requires that she identify with the action that causes the change. The second condition, which is the *historical condition*, requires that her identification satisfy certain historical requirements, such as the fact that she enjoyed ethical independence. We can generate different versions of the envy test by combining it with different accounts of responsibility. Since my aim in this section is merely to clarify the envy test, I shall not at this stage argue in defence of any particular version.

Third, we must distinguish *interpersonal envy* from *counterfactual envy*.¹³ Interpersonal envy refers to the envy that an individual has for the opportunities enjoyed by another. By contrast, counterfactual envy refers to the envy that an individual has for the opportunities that she could have enjoyed under different conditions. The subject of the envy test is interpersonal envy.¹⁴ In *Talent*, both Lucky and Unlucky counterfactually envy the opportunities that they would have enjoyed under more favourable conditions, where their natural talents are more marketable

¹² Richard Arneson, 'Equality and Equal Opportunity for Welfare', *Philosophical Studies*, 56 (1989), 77-93 at 83-4.

¹³ For the distinction between interpersonal and counterfactual judgments, see Susan Hurley, 'Luck and Equality', *Proceedings of the Aristotelian Society, Supplementary Volumes*, 75 (2001), 51-90 at 60.

¹⁴ Matthew Clayton, 'The Resources of Liberal Equality', *Imprints*, 5 (2000), 63-84 at 77-8; and Andrew Williams, 'Equality for the Ambitious', *The Philosophical Quarterly*, 52 (2002a), 377-89 at 387.

than they in fact are. The same is not true of interpersonal envy. Whilst Unlucky interpersonally envies Lucky's opportunities, Lucky does not interpersonally envy Unlucky's opportunities. Thus, it is only Unlucky's envy of Lucky's opportunities that causes the failure of the envy test. The test's concern with interpersonal envy has the implication that, for its failure, there must be an actual individual whose initial opportunities are envied. The mere possibility of such an individual is irrelevant.

Finally, it is important to note that the envy test is not necessarily sensitive to an individual's actual judgments. What matters is that her values must *imply* that her own opportunities are less valuable than another's, irrespective of whether or not she actually makes the judgment or forms that belief.¹⁵ This point is important as it forms part of my reply to one of the objections I consider later in this chapter.

4.2 The Appeal of the Envy Test

Let's return, then, to the two ways in which to determine whether an individual suffers disadvantage: the metric test and the envy test. The metric test proceeds in two stages. First, we develop a metric by which to measure disadvantage. Second, we appeal to this metric in order to judge whether an individual suffers disadvantage. On this view, an individual suffers disadvantage if and only if her opportunities are less valuable than another's, measured in terms of whichever metric we select.

The metric test is unsatisfactory for three reasons. First, it may be impossible to identify a metric that we can justify to each member of society, in the sense that each individual accepts the validity of the reasons on which the justification of the metric is based. To see this, let's consider that fact that, whereas some people regard

¹⁵ This feature of the test is most clear in its presentation in *ibid.*, 387.

infertility as disadvantageous (say, because they want to bear children), others regard it as advantageous (say, because they want not to worry about the threat of pregnancy). If our metric treats infertility as disadvantageous, then we cannot justify it to the latter. Indeed, it would usurp the latter's judgments. But, if it treats it as advantageous, then we cannot justify it to the former and, similarly, it would usurp the former's judgments. Whichever is chosen, there is likely to be a section of society to whom we cannot justify the metric. I shall call this the *usurpation objection*. (Below, I consider whether our metric could be silent with respect to the disadvantageousness of infertility.)

To clarify, the usurpation objection relies upon two premises. The first premise is that, in any just society, individuals will inevitably reach different judgments about values. This is the disagreement claim. The second premise is that there is something distinctly and highly valuable about political morality being justifiable to every individual. This refers to the interest in political autonomy. I shall not say anything in defence these premises, since I discussed both in chapter 1.

Let's now turn to the second and third objections. Each of these follows from the first objection, but also has independent argumentative force. That is, each objection would remain forceful even if we were to reject the usurpation objection. According to the *respect objection*, if any metric inevitably relies upon a justification that an individual may reject, then the metric test risks identifying as disadvantaged an individual who rejects the reasons that are offered in support of this judgment. This judgment displays disrespect. It is disrespectful to judge an individual as disadvantaged on grounds that she does not accept – that is, even though she does not believe that she is disadvantaged for these reasons – because it displays a negative attitude towards the individual's ability effectively to judge and to advance her own interests.¹⁶

¹⁶ Quong, *Liberalism Without Perfection*, 100-06.

According to the *burdens objection*, if any metric inevitably relies upon a justification that an individual may reject, then the metric test also risks identifying as disadvantaged an individual who considers herself to be advantaged in comparison to the individual(s) who must bear the burdens of the corrective action that may later be justified in her name, e.g. those who may be required to pay her compensation.¹⁷ This is a counter-intuitive conclusion that troubles even staunch defenders of the metric test.¹⁸

A defender of the metric test may attempt to respond to the first of these objections, the usurpation objection, by maintaining that it is possible to identify a metric that we can justify to each member of society. In fact, this is the move that Rawls makes when he advocates the use of an index of social primary goods, which I discussed in the previous chapter. To repeat, the social primary goods refer to goods that pass the all-purpose means test and the publicity test. Accordingly, we should judge whether an individual is disadvantaged solely by referring to her level of access to social primary goods. On this view, the task of identifying social primary goods ‘rests on identifying a partial similarity in the structure of citizens’ permissible conceptions of the good’.¹⁹ Even though their content differs, Rawls claims that individuals’ ambitions ‘require for their advancement roughly the same primary goods, that is, the same basic rights, liberties, and opportunities, as well as the same all-purpose means such as income and wealth, all of which are secured by the same social bases of self-respect’.²⁰

¹⁷ Dworkin, *Sovereign Virtue*, 295; and Ronald Dworkin, ‘Replies to Critics’, in Justine Burley (ed.), *Dworkin and His Critics* (Malden, MA.: Blackwell, 2004), 345.

¹⁸ Cohen, *On the Currency of Egalitarian Justice*, 33-40.

¹⁹ John Rawls, ‘The Priority of Right and Ideas of the Good’, *Philosophy & Public Affairs*, 17 (1988), 251-76 at 256.

²⁰ *Ibid.*, 257.

One problem with this response is that there are only very few goods that every reasonable individual can be presumed to need or to want. After all, even income and wealth may not be valued by some reasonable individuals, including, perhaps, some ascetic monks.²¹ This is damaging since it rescues the metric test from the usurpation objection only by strengthening both the respect objection and the burdens objection. This is because it is possible that a given individual may be identified as advantaged (or disadvantaged) when judged in terms of social primary goods alone, even though she still considers herself to be comparatively disadvantaged (or advantaged) once everything she cares about is taken into account. Plausibly, this may be the case with an individual who scores well in terms of social primary goods but regards her infertility as severely disadvantageous. To fail to judge her as disadvantaged in this case is objectionable. In the same vein, Arneson writes:

The controversial values that are excluded from the basis of interpersonal comparison will be differentially important to different individuals, given their present and expected possible future goals. For some persons, the excluded values may be crucial means for securing their fundamental goals. Agreeing that justice should be blind to all such goods may be disastrous for some citizens, give their particular aims (which would withstand rational scrutiny).²²

By contrast, the envy test avoids each of these three objections. This is most easily seen with respect to the second and third objections. Beginning with the respect objection: since the envy test identifies disadvantage in a way that is sensitive to each individual's

²¹ See Thomas Nagel, 'Rawls on Justice', *The Philosophical Review*, 82 (1973), 220-34 at 28-9. Against this, let me note that even monks often belong to monastic orders whose functioning depends upon access to income and wealth. For this reply, see Will Kymlicka, 'Liberal Individualism and Liberal Neutrality', *Ethics*, 99 (1989), 883-905 at 889.

²² Richard Arneson, 'Property Rights in Persons', *Social Philosophy & Policy*, 9 (1992), 201-30 at 217.

own values, it is incapable of disrespectfully identifying as disadvantaged an individual who rejects the reasons that are offered in support of the judgment that she is disadvantaged. And, turning to the burdens objection: since an individual qualifies as disadvantaged only if she regards her opportunities as less valuable than those enjoyed by another, the envy test is incapable of identifying as disadvantaged an individual who considers herself to be advantaged in comparison to the individual(s) who must bear the burdens of the corrective action that may be justified in her name.

With respect to the usurpation objection, things may appear more complicated, since it is not so obvious that the envy test is invulnerable to a similar kind of objection. To see this, let's consider the following variation on *Talent*:

Disagreement: Whereas Lucky does not envy Unlucky's opportunities, Unlucky envies Lucky's opportunities. However, Lucky rejects the reasons to which Unlucky appeals when justifying her envy: Unlucky envies Lucky's opportunity to earn a high wage but Lucky attaches no value to high wages.

Disagreement prompts us to consider the following question: Isn't Lucky now subject to an account of disadvantage that she rejects? After all, the source of Unlucky's envy is supported by a claim about the value of high wages, whose validity Lucky rejects. The force of this objection lies in the fact that it challenges the conclusion that the envy test fares any better than the metric test with respect to the present objection. In reply, let me note that, though the envy test utilises each individual's own judgment about the value of her opportunities, it does not *endorse* these judgments.²³ This is important, since the account of disadvantage that the envy test offers does not depend upon the validity of an individual's judgment. With respect to *Disagreement*, a defender of the

²³ See Clayton, 'The Resources of Liberal Equality', 79; and Matthew Clayton, 'Liberal Equality: Political not Erinaceous', *Critical Review of International Social and Political Philosophy* (forthcoming).

envy test need not take a stand on the value of high wages: the force of a complaint does not depend upon that complaint being a good one. Furthermore, we can support this by returning to the burdens of judgment and, in particular, by supposing that individuals have a duty to accept the consequences of the burdens of judgment. For Lucky, this means that, though she may reject the source of Unlucky's envy, she must recognise that, because of the burdens of judgment, Unlucky is entitled to her views about the value of a high wage and, as a result of this, also that Unlucky is entitled to make claims about being disadvantaged on this basis. In other words, she must recognise the force of the envy none the less. Thus, what can be justified to Lucky is the envy test itself, not Unlucky's judgment.

The envy test is attractive for a number of reasons, amongst these are the fact that it fares well with respect to the usurpation objection, the respect objection, and the burdens objection. Of course, by itself, this does not constitute an adequate defence of the envy test. To do this, we must consider and respond to the most pressing objections levelled against it. I take up this challenge in subsequent sections. Before then, however, it is important first for me to issue a further clarification concerning the demands of the test.

4.3 Envy and Rotation

The envy test holds that an individual suffers a disadvantage if and only if her opportunities are less valuable than those enjoyed by another individual, as measured by her own judgments about what makes one's life go well. As I shall make clear in this section, this statement is ambiguous. Indeed, it is ambiguous in a crucial way – that is, in a way that affects the test's plausibility. To highlight this ambiguity, I shall apply the envy test to Cohen's familiar case of Paul and Fred: Paul has an unchosen expensive

taste for photography and Fred has an unchosen inexpensive taste for fishing.²⁴ One way in which we can reconstruct the analysis of the envy test is as follows:

- (1) Paul is disadvantaged compared to Fred if and only if he thinks himself worse off than Fred.
 - (2) Paul cannot think himself worse off than Fred unless he would rather be in Fred's shoes.
 - (3) Paul would not rather be in Fred's shoes. He does not want to love fishing rather than photography.
- ∴ (4) Paul is not disadvantaged compared to Fred.²⁵

The problem with this argument is that the second premise is false. It is possible for Paul to think himself worse off than Fred even if Paul would not rather be in Fred's shoes. As Cohen notes, this fact is exposed by the 'shoes' metaphor: 'I can think myself better off in my shoes than I would be in yours while nevertheless thinking myself worse off in mine than you are in yours: yours fit your feet better than mine do'.²⁶ I shall call this the *rotation objection*.

In response to the rotation objection, we can distinguish two versions of the envy test. This is where the ambiguity emerges. These two versions correspond to different ways in which we can characterise what it means for an individual to consider herself to be worse off than another. On one reading, it is to do with the *choice-*

²⁴ This case is first given in Cohen, 'On the Currency of Egalitarian Justice', 923. This case is structurally identical to the Muslim-Hindu example in John E. Roemer, *Theories of Distributive Justice* (Cambridge, MA.: Harvard University Press, 1996), 321.

²⁵ This reconstruction is inspired by one found in Cohen, *On the Currency of Egalitarian Justice*, 113-14.

²⁶ Ibid.

worthiness of opportunities.²⁷ When this is the case, the envy test states that an individual is disadvantaged if and only if she would prefer to have another individual's opportunities rather than her own. In other words, if there were a pill that switched her opportunities with another's, she would want to take it. On the second reading, the envy test is sensitive to judgments about the *well-being value* of opportunities. When this is the case, the test states that an individual is disadvantaged if and only if she believes that she has less valuable opportunities for well-being than another individual. In order to distinguish these two tests, we can call the former the *rotation test* and the latter the *envy test*. To see how they diverge, let's consider the following case:

Parent: Mother is a parent of Daughter, who is a difficult child to parent. Mother invests an uncommonly large amount of effort parenting Daughter and, as a result, Mother believes she has less valuable opportunities for well-being than parents of less difficult children. However, being her daughter, Mother has a special reason to value the time she spends with Daughter and, as a result, she would not want to switch places with other parents.²⁸

According to the rotation test, Mother does not suffer a disadvantage. This is because Mother would not choose to parent another parent's child rather than her own. By contrast, the envy test states that Mother does suffer a disadvantage. This is because, despite not wanting to switch, Mother does regard her opportunities for well-being as less valuable than those enjoyed by other parents. Accordingly, *Parent* is a case in which Mother's judgment about the choice-worthiness of her opportunities diverges from her judgment about the well-being value of her opportunities.

²⁷ For discussion of the idea of choice-worthiness, see Scanlon, *What We Owe to Each Other*, 112-13.

²⁸ This case may be complicated by the fact that Mother may be responsible for having chosen to bring Daughter into the world. I put these complications to one side.

Parent is important for two reasons. First, it helps to illuminate the distinction between the rotation test and the envy test, which, so far as I am aware, is one that has not yet been appreciated. Commentators regularly elide the two tests, as if they were identical, when in fact they are distinct. For example, in a discussion of Paul the photographer, Dworkin mistakenly elaborates the envy test by appeal to the idea that Paul would feel ‘revulsion’ were he ‘offered a pill that would drain away his interest in art’.²⁹ As explained above, from the fact that Paul would not take such a pill, we can conclude only that he is not disadvantaged according to the rotation test, but not that he is not disadvantaged according to the envy test. The same confusion is also invited by other adherents of the envy test, such as Matthew Clayton and Andrew Williams.³⁰

Second, the case is also important because it provides intuitive evidence both against the rotation test and in favour of the envy test. It provides evidence against the rotation test, since the rotation test generates the intuitively implausible conclusion that Mother is not disadvantaged. This reinforces the rotation objection. But, the case also provides evidence in favour of the envy test. This is because the envy test is capable of generating the intuitively plausible conclusion that Mother is disadvantaged. This enables us to avoid the rotation objection.

The greater plausibility of the envy test reflects the more general fact that, for the purpose of identifying disadvantage, claims based on judgments about well-being

²⁹ Dworkin, *Sovereign Virtue*, 291. See also Ingrid Robeyns, ‘Is Nancy Fraser’s critique of theories of distributive justice justified?’, *Constellations*, 10 (2003), 538-53 at 541.

³⁰ Without noting the potential differences in these cases, Clayton sometimes discusses cases ‘in which [an individual] believes her life is more successful than those of others’, i.e. the envy test, but at other times discusses cases in which an individual ‘would prefer to have what someone else has in the light of what matters to her’, i.e. the rotation test. Clayton, ‘Liberal Equality: Political not Erinaceous’. See also Clayton, ‘The Resources of Liberal Equality’, 75; and Williams, ‘Equality for the Ambitious’, 379.

are more relevant than claims based on judgments about choice-worthiness. This conclusion should not be surprising. Claims based on judgments about choice-worthiness are typically shaped by the special reasons that we have to deem as choice-worthy projects to which we are committed or with which we have a joint history. In *Parent*, Mother has a special reason to value spending time with her Daughter, and the existence of this reason should not count against the fact that she suffers disadvantage.³¹

This is not to say that the rotation test is not at all relevant to identifying disadvantage. This is because, if an individual qualifies as disadvantaged according to the rotation test, this is *sufficient* to show that she also qualifies as disadvantaged according to the envy test. If Mother did want to switch opportunities with a parent of a less difficult child, this would entail that she regards her opportunities for well-being as less valuable than those enjoyed by a parent of a less difficult child. However, what is significant for our purposes is that the reverse is not true. From the fact that Mother does not want to switch places, we cannot infer that she regards her opportunities for well-being as no less valuable than those enjoyed by a parent of a less difficult child. This is why we must focus on the envy test rather than the rotation test.

4.4 The Responsibility Objection

In order to defend further the envy test, it may help to respond to two objections. The first objection, which I consider in this section, is the responsibility objection. To begin, let's consider the following case:

³¹ For an analysis of the role of history and commitment in generating special reasons to value, see Joseph Raz, *The Practice of Value* (Oxford: Oxford University Press, 2003).

Religion: Christian possesses rare and expensive rosary beads, but she is economically poor. Atheist lacks possession of rare and expensive rosary beads, but she is economically rich. Though Christian does not regard Atheist's opportunities as all things considered more valuable than her own, Christian envies Atheist's opportunity for greater wealth – that is, she in one way envies Atheist's opportunities.³²

The envy test states that, since Christian does not envy Atheist's opportunities, Christian is not disadvantaged. The responsibility objection claims that this conclusion is too quick. According to this objection, before we can make a judgment about whether or not Christian is disadvantaged, we first need to know whether or not Christian is *causally responsible* for her judgment about the value of her rosary beads.

Nils Holtug offers one version of this objection. He invites us to consider a case in which an individual forms judgements about the value of her opportunities only as a result of a surgical implantation in her brain.³³ Applied to *Religion*, we could suppose that this is why Christian values her rosary beads so highly. When this is the case, it is no longer clear that Christian's lack of envy for Atheist's opportunities counts decisively against her being disadvantaged. To strengthen the objection, we may even suppose that Christian's rosary beads objectively lack value, such that Christian's lack of envy for Atheist's opportunities causes Christian's life to go worse than Atheist's, in objective terms.

The present objection appeals to a causal account of responsibility. According to this view, we can hold an individual responsible for bringing about an outcome if

³² This case is similar to Cohen's case of Paul and Fred, as well as the Muslim-Hindu example in John E. Roemer, *Theories of Distributive Justice* (Cambridge, MA.: Harvard University Press, 1996), 321. *Religion* differs from these two cases in that the two parties do not have identical opportunities: one has rosary beads and one does not. For this case, I thank Dick Arneson.

³³ Nils Holtug, 'Welfare Luck Egalitarianism and Expensive Tastes', (unpublished manuscript).

and only if she has some degree of control over bringing about the outcome. Accordingly, we cannot hold an individual responsible for bringing about an outcome over which she had no control. A familiar consequence of the causal account of responsibility is that, if hard (metaphysical or psychological) determinism is true, such that an individual lacks control over her behaviour, she cannot be held responsible for bringing about any outcome.³⁴

This version of the responsibility objection fails. This is because, as I noted earlier, the envy test is sensitive to the judgments an individual forms under appropriate conditions. In particular, in section 4.1, I stated that the test includes a historical condition, which demands that an individual enjoy ethical independence when forming her judgements. This condition allows us to rule out those cases in which an individual holds certain beliefs only as a result of intentional interference, of the kind involved in Holtug's case. For this reason, the present version of the objection is unsuccessful.

However, we can revive the responsibility objection by considering a case in which Christian values her rosary beads not only as a result of intentional interference but instead only as a result of some random event, such as being struck by a bolt of lightning. This case is an improvement in that it avoids the problems associated with intentional interference. Here, it is again alleged that it is implausible to maintain that Christian is not disadvantaged. However, this version of the responsibility objection is vulnerable to a similar reply. This is because we can specify the historical condition in such a way that generates the conclusion that we should not hold Christian responsible for her judgment about the value of her rosary beads. In addition to the enjoyment of ethical independence, Christian's judgments must also be formed in a way that does

³⁴ Cohen, *On the Currency of Egalitarian Justice*, 32.

not involve a total break in normal patterns of causation. This condition is not satisfied if Christian values her rosary beads only as a result of being struck by a bolt of lightning.³⁵

In order to get the responsibility objection off of the ground, we therefore need to consider a case in which, though Christian is not causally responsible for her judgment, the judgment is formed in a way that involves neither a total break in normal patterns of causation nor interference of a kind that violates ethical independence. Perhaps these conditions would be satisfied were Christian to value her rosary beads only as a result of being innocently exposed to her family's collection of rosary beads at a very young age. The problem with this case, however, is that it is no longer clear that it is a counter-example to the envy test. That is, when this is the case, it is no longer clear that the envy test gets it wrong when it pronounces that Christian is not disadvantaged. Here, it seems appropriate to defer to Christian's judgment about the value of her rosary beads, even though she is not causally responsible for this judgment. Thus, I agree with Dworkin, who similarly concludes that causal patterns of this kind are 'too disconnected from anything we think should matter in a decision of that kind'.³⁶

A virtue of the envy test is that it consults an individual's own judgments to determine whether or not she is disadvantaged. This feature of the test is attractive irrespectively of whether or not she is causally responsible for these judgments. This is not to say that we should always defer to these judgments; plainly we should not. The point is simply that causal responsibility in particular cannot do the work that the responsibility objection assigns to it. For this reason, we can resist this objection.

³⁵ Here, I follow P. F. Strawson, *Freedom and Resentment and Other Essays* (Hoboken: Taylor & Francis, 2008), 8-10.

³⁶ Dworkin, *Justice for Hedgehogs*, 234.

4.5 The Mistakes Objection

Let's now turn to the mistakes objection. This objection states that the envy test is implausible because it allows the judgment that an individual is disadvantaged to be held hostage by mistaken judgments concerning the value of an opportunity.³⁷ The mistakes objection cuts in two directions. First, there are cases in which, because of a mistaken judgment, the envy test treats an individual as disadvantaged even though, in objective terms, she is not. To see this possibility, let's consider the following case, inspired by one discussed by Anderson:³⁸

Hooked Nose: Maria is a very vain person, who mistakenly gets hysterical over being genetically determined to have a hooked nose. As a result of this, Maria envies the opportunity to be free of a hooked nose, which many individuals enjoy.

According to the envy test, Maria suffers a disadvantage. This is because she envies the opportunity to be free of a hooked nose. On this view, Maria may be entitled to corrective action, perhaps including compensation, even though she is not disadvantaged when measured in objective terms. Challenging this result's plausibility, Anderson writes: 'It is hard to see how such a preference could create an obligation on

³⁷ Versions of this objection are given in Richard Arneson, 'Dworkin and Luck Egalitarianism: A Comparison', in Serena Olsaretti (ed.), *The Oxford Handbook of Distributive Justice* (Oxford: Oxford University Press, forthcoming) and in Hugh Lazenby, 'Mistakes and the Continuity Test', *Politics, Philosophy & Economics* (forthcoming). A similar objection, albeit within the context of normative tort theory rather than an account of disadvantage, is given in Adam Slavny, 'On Being Wronged and Being Wrong', (unpublished manuscript).

³⁸ Anderson, 'What is the Point of Equality?', 303.

the part of society to pay for [Maria's] plastic surgery'.³⁹ If we accept the envy test, Maria's mistaken judgment may entitle her to compensation that she may otherwise be denied.

Second, there are cases in which, because of an individual's mistaken judgment, the envy test fails to generate the conclusion that an individual is disadvantaged even though, in objective terms, she is disadvantaged. To demonstrate this possibility, let's consider the following case:

Masochist: Nora mistakenly attaches considerable value to suffering severe pain. Nora experiences severe pain during childbirth but, because of her values, she does not envy the opportunities of others who are not born with painful diseases.⁴⁰

The envy test implies that Nora is not disadvantaged, even though she is disadvantaged when measured in objective terms. Accordingly, if we accept the envy test, Nora's mistaken judgment may deny her corrective action, such as pain relief, to which she may otherwise be entitled. Many readers will find this counter-intuitive.⁴¹ To be sure, I distinguish this kind of case from the previous kind not because each affects the plausibility of the mistakes objection to different degree, but instead because they demonstrate the objection's versatility and, thus, force.

Having distinguished two directions in which the mistakes objection cuts, let me now distinguish two versions of the mistakes objection. According to the *comparative mistakes objection*, we ought to reject the envy test on the grounds that it

³⁹ Ibid.

⁴⁰ I put to one side the possibility that the Masochist's pain may be a component of a more complex pleasure.

⁴¹ Williams, 'Equality for the Ambitious', 389.

identifies disadvantage in a way that is unfairly sensitive to inequalities between individuals in their ability accurately to judge the value of an opportunity. A premise of this argument is that some individuals are more likely than others to make these kinds of mistakes.⁴² By contrast, according to the *non-comparative mistakes objection*, we ought to reject the envy test on the grounds that it identifies disadvantage in a way that is sensitive to the mistakes that each individual may make when judging the value of an opportunity. This argument does not rely upon the premise that some individuals are more likely than others to make these kinds of mistakes.⁴³

To illuminate further the distinction between the comparative mistakes objection and the non-comparative mistakes objection, let's consider again *Masochist*. The comparative mistakes objection states that we should reject the envy test if Nora's mistaken judgment about the value of severe pain is held in part because she is poorer than others at judging the value of her opportunities. According to this objection, we should reject the envy test on the grounds that it effectively penalises Nora for her comparatively poor native ability accurately to judge the value of her opportunities. The comparative mistakes objection lacks force when there is no inequality between individuals in their ability accurately to judge the value of an opportunity. Perhaps Nora has identical abilities to others but, because of the burdens of judgment, she has

⁴² This version of the objection is endorsed in Arneson, 'Dworkin and Luck Egalitarianism' and in Lazenby, 'Mistakes and the Continuity Test'.

⁴³ This version of the objection is endorsed in Slavny, 'On Being Wronged and Being Wrong' and in Anderson, 'What is the Point of Equality?', though Anderson's position is more difficult to discern, since her presentation of the objection is much briefer and less clear. There is also a reason to believe that Hugh Lazenby endorses this objection. This is because the non-comparative mistakes objection is essential for upholding Lazenby's more general claim, which is that, when identifying disadvantage, we should be guided solely by balance of evidence, and not by an individual's mistaken judgments. He calls this the correctness test. See Lazenby, 'Mistakes and the Continuity Test'.

simply come to a different judgment. Even when this is the case, however, the non-comparative mistakes objection still applies. According to this objection, the envy test is implausible because it treats Nora's mistaken judgment as decisive against her being disadvantaged. The force of this objection does not depend upon Nora being poorer than others at accurately judging the value of an opportunity.

In the next section, I offer a reply to each of the mistakes objections. Before this, however, I offer two clarifications that weaken, but do not defeat, these objections. The first clarification makes use of the fact that, when an individual clearly makes a mistake about the value of an opportunity, this is often as a result of unjust interference of the kind that violates ethical independence and, in turn, the historical condition. This conclusion grants a defender of the envy test the theoretical resources to respond to many of the cases that appear to lend support to the mistakes objections without having to revise her position. In *Hooked Nose*, for example, perhaps we should maintain a sceptical attitude towards Maria's envy on the grounds that it is likely that it is the product of judgments held only as a result of the unjust influence of certain social norms. Of course, this fact does not defeat either of the mistakes objections, since individuals will no doubt continue to make mistaken judgments about the value of an opportunity, even in the absence of violations of ethical independence. For this reason, this reply will not suffice in all cases.

The second clarification is a little lengthier. It concerns how the envy test treats different kinds of mistakes. To begin, let's contrast the following pair of cases, discussed by Hugh Lazenby:

Deafness: Dan is deaf, but incorrectly (let's assume) believes that deafness is no less valuable than being able to hear. Accordingly, Dan incorrectly believes he is no worse off than a hearing person.

Smoking. Sam values his health above all else, but incorrectly believes that smoking is good for one's health. Accordingly, Sam incorrectly believes he is better off than a non-smoker.⁴⁴

The mistakes objections purport to impugn both of these cases. After all, we have stipulated in both cases that at least one individual makes a mistaken judgment about the value of an opportunity and, we can add, this could be due to Dan and Sam being poorer than others at accurately judging the value of an opportunity.

However, a defender of the envy test may plausibly assert that we should treat these two cases differently for the purpose of identifying disadvantage. This is because we may distinguish cases involving mistakes that occur when *forming* one's values and cases involving mistakes that occur when *pursuing* one's values.⁴⁵ We may restrict the scope of the envy test so as to include only those cases involving mistakes that occur when forming one's values, but to exclude all those cases involving mistakes that occur when pursuing one's values. When this is the case, the envy test is sensitive to the judgments that an individual would form were she not to make a mistake when considering how best to pursue her (possibly mistaken) values. Accepting this enables us sensibly to resist the implausible conclusion that Sam is not disadvantaged in *Smoking*. This is because Sam would regard his opportunities as less valuable than a non-smoker's were he not to make a mistake when considering how best to pursue his

⁴⁴ Lazenby, 'Mistakes and the Continuity Test'. In turn, the first case is taken from Andrew Williams, 'Dworkin on Capability', *Ethics*, 113 (2002b), 23-39 at 37.

⁴⁵ This distinction differs from the distinction between mistakes about facts and mistakes about values (or, more precisely, mistakes about facts that are not facts about value), which is mentioned in Lazenby, 'Mistakes and the Continuity Test'. On the assumption that there is no god, a christian makes a mistake that occurs when forming her values, but it is also a mistake about a fact. This case shows how the two distinctions may diverge.

values.⁴⁶ Moreover, this is consistent with my earlier formulation of the envy test, where I emphasised the fact that what matters is simply that an individual's values *imply* that her opportunities are less valuable than another's. In *Smoking*, Sam's values may imply that he is disadvantaged, even if he does not reach this judgment because of his mistaken belief.

In addition to rendering the results of the envy test intuitively more plausible, this move is further supported in two ways. First, there is a general precedent for treating differently cases involving these two kinds of mistakes. To take a familiar example, whereas perhaps I am not morally permitted to prevent you from walking across a dangerous bridge if you mistakenly believe your life is not worth living and are therefore willing to risk death, clearly I am morally permitted to prevent you from walking across a dangerous bridge if you mistakenly believe the bridge is not dangerous.⁴⁷ Thus, whereas my actions ought to be sensitive to mistakes that occur when forming your values, they ought not to be sensitive to mistakes that occur when pursuing your values.

Second, there is also a compelling justification for restricting the scope of the envy test in this way. This justification appeals to the fact that, by ignoring an individual's mistakes about how best to pursue her values, we better enable her to

⁴⁶ Thought this distinction offers an attractive first approximation, it is insufficiently refined to be able to deal with more complex cases. To see this, we can consider a variation on *Smoking* in which Stu adopts his smoking values because he is attracted to coolness, but only on condition that it is safe. He decides not to engage in chicken games of the kind in *Rebel without a Cause*, because, though cool, they are unsafe. He adopts a preference to smoke because he mistakenly believes smoking is safe. This looks like this is a case in which Stu's mistake occurs forming his values, but it seems implausible to allow this mistake to influence our judgment about whether or not Stu is disadvantaged. Proponents of the envy test must therefore refine the present distinction in order to overcome problems of this kind.

⁴⁷ J.S. Mill, *On Liberty* (Indianapolis: Bobbs-Merrill, 1956 [1859]), 117.

pursue the values that she already has.⁴⁸ An important consequence of this is that we can justify to an individual our account of disadvantage by appealing to reasons that are acceptable to her in the light of the values she holds, even if she does not in fact accept the relevance of those reasons in a given case.⁴⁹

By restricting the scope of the envy test in this way, we weaken both of the mistakes objections. This is because a defender of the objections may not criticise the envy test on the basis of cases such as *Smoking* that involve mistakes about pursuing values. Having said this, this restriction clearly does not defeat either of the objections. This is because a defender of these objections may continue to appeal to other cases, such as *Deafness*, that involve other kinds of mistakes in order to make her point.

4.6 Replying to the Mistakes Objections

My next task is to rebut the mistakes objections. I shall begin with the comparative mistakes objection, before then turning to the non-comparative mistakes objection.

4.6.1 Replying to the Comparative Mistakes Objection

According to the comparative mistakes objection, we ought to reject the envy test because it identifies disadvantage in a way that is unfairly sensitive to inequalities

⁴⁸ Dworkin, *Sovereign Virtue*, 492, n. 7. See also the discussion of soft paternalism in Joel Feinberg, *The Moral Limits of the Criminal Law*, vol. 3 (Oxford: Oxford University Press, 1986), 12-16.

⁴⁹ The fact that she does not in fact accept these reasons is unproblematic: I am morally permitted to prevent you from walking across a dangerous bridge if you mistakenly believe the bridge is not dangerous, even if I am unable to prove this to you, and thus even if I am unable to justify my actions in terms of reasons that you in fact accept.

between individuals in their ability accurately to make value judgments. We can respond to this objection by noting that the envy test is likely to treat as a disadvantage an individual's comparatively poor ability accurately to make value judgments. For instance, if Nora has less ability than others accurately to judge the value of an opportunity, then presumably she will envy an opportunity enjoyed by others – namely, others' opportunity more accurately to make value judgments. The envy test thus implies that we should treat this as disadvantageous to Nora. For this reason, the comparative mistakes objection does not threaten the test's plausibility. When we justify corrective action in this way, we do so in response to Nora's comparatively poor ability accurately to make value judgments, not as a response to her mistaken value judgments as such, but this feature of the response should not trouble us.

This reply is contingent upon Nora actually envying another's opportunities or, more specifically, it is contingent upon Nora's values implying that she is disadvantaged in virtue of her inferior ability. Of course, this might not be the case. It may be that Nora's values do not imply that she is disadvantaged in virtue of her inferior ability. If this were the case, the envy test could not treat her as disadvantaged. Whilst this is correct, it is not clear to me that it is in any way counter-intuitive. That is, in the highly contrived (and even less likely) case in which Nora fails to envy others only because she does not value the ability accurately to judge the value of an opportunity, it is plausible simply that Nora is not disadvantaged in the relevant sense. For this reason, this attempt to re-assert the comparative mistakes objection fails.

4.6.2 Replying to the Non-Comparative Mistakes Objection

The non-comparative mistakes objection is more forceful. It has force even in those cases in which an individual does not envy another individual's ability to judge the

value of an opportunity. How, then, might we try to meet the non-comparative mistakes objection? My first response is to deny that the consequences of accepting the envy test are *in any way* implausible. For instance, in *Hooked Nose*, is it really implausible to claim that Maria is disadvantaged, when it is stipulated that this is something that causes her to get hysterical? I do not think so.⁵⁰ Similarly, in *Deafness*, is it really implausible to deny that Dan is disadvantaged, when it is stipulated that Dan believes being deaf is no less valuable than being able to hear? Again, I do not think so.⁵¹ To be sure, I do not deny that Maria's and Dan's value judgments may be mistaken in objective terms; rather, I deny that this fact is significant for the purposes of determining whether either individual suffers disadvantage.

Though this response to *Hooked Nose* and *Deafness* is compelling, it is not a fully satisfactory response to the non-comparative mistakes objection. This is because a defender of the objection can appeal to increasingly extreme cases in order to make her point. For example, let's consider the following variation on *Hooked Nose*:

Vanity: Olivia is a very, very vain person, who gets hysterical over having a small birthmark on her arm, even though it is imperceptible to the naked eye. As a result of this, Olivia envies the opportunity to be free of any birthmarks.⁵²

⁵⁰ Moreover, in making this claim, I agree with the National Health Service of the United Kingdom, which funds some forms of cosmetic surgery for precisely these reasons.

⁵¹ Commenting on this case, Dworkin adds: 'Why should the community provide Dan with the funds needed for an expensive operation that would restore his hearing, rather than spending those funds in other useful ways, when he not only would not use those funds for that purpose but also would refuse the operation even if it were free?.' See Dworkin, '*Sovereign Virtue*: Revisited', 139.

⁵² For this case and discussion of it, I thank Adam Slavny.

In this case, accepting the envy test implies that Olivia is disadvantaged. This result is clearly counter-intuitive, and it would be implausible to deny this. Perhaps the same is true in *Masochist*.

My response to the non-comparative mistakes objection in these cases is to concede that it has *some* force, but to deny that this is sufficient to sanction the rejection of the envy test. We should bite the bullet. Since this response may strike some readers as unconvincing – indeed, anti-climactic – it is necessary to explain why this is not the case. In support of this, I shall make two points.

First, let me draw attention again to the costs of abandoning the envy test. The costs that I have in mind are those costs revealed by my three earlier objections to the metric test. In particular, let me note that, if we treat Nora as disadvantaged, contrary to her own mistaken judgment, then (i) we must appeal to an account of disadvantage that we cannot justify to each member of society, (ii) we risk disrespecting Nora by justifying corrective action, or at least the offer of corrective action, on grounds that she does not accept, and (iii) we risk identifying her as disadvantaged even though she considers herself to be advantaged in comparison with the individual(s) who must bear the burdens of the corrective action that we may justify in her name, e.g. those who may be required to pay her compensation. Together, I believe these costs count decisively against the force of the non-comparative mistakes objection.

Of course, a critic may remain unpersuaded. Though she may acknowledge that the envy test has several virtues, she may maintain that these have insufficient weight to justify accepting the test in the light of the counter-intuitive implications highlighted by the present objection. Let me turn, here, to my second point. It relates to the fact that there is a general trend within liberal political theory that maintains that we should respect an individual's judgment, even if it is mistaken, such that it risks seriously jeopardising her well-being, measured in objective terms. A clear example of

this liberal trend is given by the principle of anti-paternalism. If we accept this principle, as many liberals do, we ought to respect an individual's decision to pursue a life of hedonism rather than a more philosophical life, even if we know that the latter would be much more valuable to her than the former, when measured in objective terms.⁵³ In a similar vein, we ought to respect an individual's judgment regarding the value of her opportunities, even if we know that her judgment is mistaken such that it risks seriously jeopardising her well-being, measured in objective terms.

To be sure, my aim is not to defend either the principle of anti-paternalism or the general liberal trend that it reflects. Instead, the aim of this argument is to point out that the non-comparative mistakes objection highlights implications of the envy test that should be familiar to liberals. This is not to deny that they are counter-intuitive. Rather, the point is that, if a critic accepts the objection, she may have to give up other familiar principles of liberal political theory, such as the principle of anti-paternalism, since they may be equally vulnerable to similar kinds of objections.⁵⁴ For many people, including myself, this is too high a price to pay, and it is partly for this reason that we must resist the appeal of the non-comparative mistakes objection.

4.7 Conclusion

My aim in this chapter has been to defend the envy test. Very roughly, this test states that we should treat an individual as disadvantaged if and only if she envies another's opportunities. In this form, the envy test is very clearly a test for disadvantage in a

⁵³ Quong, *Liberalism Without Perfection*, ch. 3.

⁵⁴ Importantly, I say that she *may* have to give up the principle of anti-paternalism, since it may be possible for a critic to point to some relevant disanalogy between the envy test and the principle of anti-paternalism. In the absence of such an argument, I am sceptical of the existence of such a disanalogy.

general form, rather than specifically for occupational disadvantage. However, it is easy to revise the envy test in such a way that delivers this more specific result. On this view, we should treat an individual as *occupationally disadvantaged* if and only if she envies another's *occupational opportunities*.

It is likely that a wide range of judgments will factor into an individual's assessment of the comparative value of her occupational opportunities. This is because many individuals care for more than their salary, and the additional factors to which they attach value will influence their judgments. Even if an individual has a greater capacity to earn a high income than others, she may still envy others' occupational opportunities if they fare much better in terms of opportunities for discretionary time, for example. An attractive feature of the envy test is that it allows us to defer to an individual's own judgments in order to determine the relative weightings of various factors that go into the assessment of whether or not she is occupationally disadvantaged, including a concern for both income and discretionary time.

The ambitions of this chapter are in one respect very modest. Though I develop and defend an account of (occupational) disadvantage, I have chosen not to address the relationship between (occupational) disadvantage and corrective action, other than to allude to the fact that (occupational) disadvantage may entitle an individual to corrective action, perhaps in the form of compensation, say. This issue is important, for addressing it is essential if we are to appreciate the significance of occupational disadvantage within an account of justice in work. Without it, we cannot choose between the various social institutions that respond to occupational disadvantage in very different ways. This is the issue to which we now turn.

5 The Limits of Occupational Disadvantage

My aim in this chapter is to develop an account of the just response to occupational disadvantage, as defined according to the conclusions of the previous chapter. I shall use the label '*disadvantage-based*' to refer to those kinds of interventions in the job market that we can justify in this way.

We can distinguish disadvantage-based job market regulation from other kinds of regulation, whose purpose is not to mitigate or to eliminate occupational disadvantage. Amongst other things, this includes interventions designed to protect basic rights – that is, designed to protect the basic right against relationships of servility, the basic right to the social bases of self-respect, and the basic right to be treated as an equal. To repeat, our concern for basic rights is prior to our concern for occupational disadvantage. Therefore, we can view the account that I develop in this chapter as a model for helping us select between those social institutions that arrange and distribute work in a way that does not violate basic rights.

Disadvantaged-based job market regulation can take many forms. For instance, Paul Gomberg proposes direct interventions to promote greater job sharing, such that each worker performs an equal share of desirable and undesirable tasks. He illustrates this idea by describing how it applies to the case of workers in a hospital:

everyone, including doctors, cleans up; no one need spend a full work week doing housekeeping. Doctors clean toilets. Doctors and nurses change bed linens. Similarly, no one need spend a full work week in the laundry room or peeling vegetables in the kitchen. Dieticians peel vegetables. Highly trained people share this labor.¹

¹ Gomberg, *How to Make Opportunity Equal*, 76.

I shall say more about Gomberg's proposal in the next chapter. For now, it is important to note only that it is one proposal amongst many. Other recommendations include: (i) measures designed to enhance the internal benefits of work, by making work more enjoyable, say; (ii) measures designed to enhance the external benefits of work, by increasing wages or capping working hours, say; and (iii) measures designed to enhance the independent benefits of work, by making work more productively efficient, say.²

However, any defence of disadvantaged-based job market regulation faces a formidable challenge. This is because, on the face of it, the only justification for such interventions seems to appeal to controversial claims about the content and value of the various components of desirable and undesirable jobs. If this were the case, such regulation would plainly be inconsistent with the liberal principle of legitimacy. To repeat, this principle states that we have very weighty reasons to justify political legislation in terms of public reasons that we can expect all individuals to accept in the light of principles and ideals acceptable to common human reason. Claims about the content and value of the various components of desirable and undesirable jobs do not meet this standard, and so are off the table, so to speak, even though they may be sound as claims about what people's lives go well. This forces proponents of disadvantage-based job market regulation to offer an alternative defence that is consistent with the liberal principle of legitimacy. This is the challenge that I take up in this chapter.

The argument develops as follows. In section 5.1, I clarify the way in which the liberal principle of legitimacy threatens the justifiability of disadvantage-based job

² For an overview of these proposals, see David Spencer, 'Promoting High Quality Work: Obstacles and Opportunities', *Journal of Business Ethics*, 114 (2013), 583-97 at 595-7.

market regulation. In sections 5.2-5.5, I show how we can appeal to Dworkin's model of fair insurance in order to justify the kind of regulation under consideration.³ This conclusion is perhaps surprising, given that Dworkin is sometimes read as defending 'the free market' and as having offered a theory that is blind to many of the considerations that are important to an account of justice in work.⁴ In section 5.6, I show how this model is consistent with the demands of the liberal principle of legitimacy, and so is capable of overcoming the formidable challenge that I have mentioned. In sections 5.7-5.9, I consider and respond to three objections to the suggested use of the model of fair insurance. To be sure, my aim in this chapter is merely to offer a model for justifying disadvantaged-based job market regulation, and it is not to defend any specific policy proposals. The latter task is one that I save for the next chapter.

5.1 The Challenge

The liberal principle of legitimacy threatens many defences of disadvantage-based job market regulation. This is because proponents of these interventions often defend them by appeal to non-public reasons. In its most general form, this position states that, without appropriate disadvantage-based regulation, the job market risks preventing – or, at least, making much more difficult – individuals' pursuit of flourishing lives. The problem, however, is that it is impossible to make this case

³ The clearest presentations of this model are in Dworkin, *Sovereign Virtue*, chs 2 and 9.

⁴ For example, Chris Armstrong attempts to draw parallels between Dworkin's approach and the neoliberal agenda behind recent changes in welfare provision. See his, 'Equality, Risk and Responsibility: Dworkin on the Insurance Market', *Economy and Society*, 34 (2005), 451-73. Anderson draws similar conclusions, though less extreme, in her 'What is the Point of Equality?'.

without appealing to controversial claims about human flourishing, of the kind that anti-perfectionists reject.

As I noted in section 1.4, there are two areas of controversy here. First, there are controversial claims about what makes work valuable or disvaluable. Second, there are controversial claims about the comparative value of valuable work. Elaborating on the second of these, Arneson notes:

A worker might aim to reduce the amount of her lifetime spent working...so as to cultivate a private project. A large paycheck (permitting unpaid leaves of absence), long vacations, and short work hours would be highly desirable from the standpoint of this worker who seeks to maximize her lifetime human perfection score. There surely need be nothing irrational or otherwise faulty in such perfectionist calculation.⁵

We can express the same worry in a different way, by considering the possible complaint that an individual may have against certain justifications of disadvantage-based job market regulation. Let's suppose that the government justifies its decision to democratise certain firms on the grounds it believes that: (i) this will enhance individuals' control over their working lives; and (ii) greater control over one's working life aids the pursuit of a flourishing life. Let's now suppose that Prital rejects claim (ii) – or, more modestly, let's suppose that, though she does not reject claim (ii), she believes that the importance of control over her working life to her pursuit of a flourishing life pales into insignificance when compared with other factors, such as enjoying time with her family. If this is the case, when the government justifies its

⁵ Arneson, 'Meaningful Work and Market Socialism', 525. Similar worries are raised in Gina Schouten, 'Is the Gendered Division of Labor a Problem of Distribution?', in David Sobel, Peter Vallentyne, and Steven Wall (eds), *Oxford Studies in Political Philosophy*, vol. 2 (Oxford: Oxford University Press, forthcoming).

decision in this way, it violates Prital's political autonomy by appealing to a premise that she reasonably rejects. Accordingly, Prital retains a powerful complaint against such a policy.⁶

This is not to say that we must therefore condemn as unjust the government's decision to democratise certain firms. Rather, if we believe the decision is just, we must identify a justification for the policy that appeals exclusively to public reasons of the kind that do not violate political autonomy. My aim in the remainder of this chapter is to take up this challenge. I do so not with respect to the democratisation of certain firms in particular, but instead with respect to the justification of disadvantage-based job market regulation more generally.

5.2 An Overview of Fair Insurance

In the next section, I shall explain how we can put Dworkin's model of fair insurance to use to defend disadvantage-based job market regulation. And, in section 5.4, I shall say more about the appeal of the model. In this section, however, I shall simply introduce it and explain its central claims. The core conviction of the model of fair insurance is that each individual should enjoy the opportunities that she would have commanded had an appropriate procedure been in place. More specifically, it requires that each individual enjoy the opportunities she would have had, if she had enjoyed access to *a fair insurance market*.⁷ This claim requires at least four clarifications.

⁶ Arneson, 'Meaningful Work and Market Socialism'. There are significant differences between my worry here and Arneson's worry. For instance, though he uses the language of perfectionism and anti-perfectionism, his underlying concern is in fact with fairness.

⁷ Dworkin, *Sovereign Virtue*, 73-83.

First, like real-life insurance markets, the model of fair insurance operates as a response to instances of bad brute luck. The relevance of the model of fair insurance thus depends upon two conditions being satisfied.⁸ Regarding the first condition, it is necessary that the individual concerned is a victim of *brute* luck, in the sense that her circumstances are neither chosen nor due to her acceptance of, or refusal to accept, certain risks. We can distinguish brute luck from *option* luck, which is ‘a matter of how deliberate and calculated gambles turn out’.⁹ It is implausible to view the model of fair insurance as a response to bad option luck, since it may generate the result that we may have reasons to mitigate the disadvantage suffered by an individual who loses a gamble. Whilst this may be true under certain conditions, it is not generally true. Indeed, as Dworkin points out, ‘if winners were made to share their winnings with losers, then no one would gamble...and the kind of life preferred by both those who in the end win and those who lose would be unavailable’.¹⁰

Regarding the second condition, it is necessary that the individual concerned is a victim of *bad* brute luck, in the sense that her brute luck is worse than others’, as measured by her own judgments about what makes one’s life go well. Paul Bou-Habib and Serena Olsaretti challenge this, by claiming that this restriction of the model of fair insurance is unnecessary.¹¹ This is incorrect. If we did not restrict the model in this way, we would generate the result that we may have reasons to advantage further an

⁸ Andrew Williams, ‘Resource Egalitarianism and the Limits to Basic Income’, *Economics and Philosophy*, 15 (1999), 85-107 at 103.

⁹ Dworkin, *Sovereign Virtue*, 73.

¹⁰ *Ibid.*, 75.

¹¹ Paul Bou-Habib and Serena Olsaretti, ‘Equality of Resources and the Demands of Authenticity’, *Critical Review of International Social and Political Philosophy* (forthcoming).

individual who does not regard herself as disadvantaged in comparison with others.¹²

This is a version of the burdens objection.

Second, the model of fair insurance identifies the just response to instances of bad brute luck in individuals' *personal resources*. Personal resources are 'qualities of mind and body that affect people's success in achieving their plans and projects: physical and mental health, strength and talent'.¹³ We can distinguish personal resources from *impersonal resources*, which are 'parts of the environment that can be owned and transferred: land, raw materials, houses, television sets and computers, and various legal rights and interests in these'.¹⁴ The distinction between personal and impersonal resources is sensitive to an account of prior rights that set the limits of when we are morally permitted to interfere with an individual's body.¹⁵ Whereas libertarians who affirm a prior right to self-ownership will treat all body parts as personal resources, liberals who deny such a prior right may be willing to treat at least some body parts as impersonal resources.

Why should the just response to bad brute luck in personal resources differ from the just response to bad brute luck in impersonal resources? After all, perhaps a more intuitive response is to concern ourselves with bad brute luck *simpliciter* – that is, with respect to an individual's sum total of personal and impersonal resources. The

¹² Philippe Van Parijs mistakenly levels this charge against Dworkin's model of fair insurance, but in doing so he helpfully illuminates what is problematic about Bou-Habib and Olsaretti's extension of the model. See Van Parijs, *Real Freedom for All*, 70. For further discussion of this point, see Williams, 'Resource Egalitarianism and the Limits to Basic Income', 103-04.

¹³ Ronald Dworkin, 'Foundations of Liberal Equality', *Tanner Lectures on Human Values* (Salt Lake City: University of Utah, 1991), 3-119 at 37.

¹⁴ *Ibid.*, 37.

¹⁵ Ronald Dworkin, 'In Defence of Equality', *Social Philosophy and Policy*, 1 (1983), 24-40 at 39.

answer to this appeals to the fact that, since it is not feasible to redistribute personal resources – or, at least, since it is not feasible to redistribute personal resources without violating prior rights – we must admit of the possibility that no amount of redistribution of impersonal resources would adequately compensate an individual for being severely disadvantaged in her personal resources.¹⁶ A consequence of this is that, if we were to concern ourselves with the sum total of personal and impersonal resources, there may be no upper limit on the amount of redistribution that the model of fair insurance could justify. Since this may require us to use resources in highly inefficient ways, this implication is plainly implausible. It is for this reason that we restrict the model in the way suggested.

Third, the model of fair insurance does not aim to identify the just response to injustice.¹⁷ For example, there is a sense in which a victim of racial discrimination is victim of bad brute luck in personal resources – namely, relating to her skin tone, given the racist attitudes of others. Given this description of this case, it may be alleged that we should theorise about the just response to this case by referring to the model of fair insurance. We should resist this proposal. As Dworkin notes:

useful though [it] may be in ameliorating other forms of handicap, [it] is plainly inappropriate in combatting the effects of prejudice. We must find some other way, compatible with the other goals and constraints of equality of resources, to place victims in a position as close as possible to that which they would occupy if prejudice did not exist.¹⁸

¹⁶ Dworkin, *Sovereign Virtue*, 80.

¹⁷ As Rawls notes: ‘The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts’. Rawls, *A Theory of Justice*, 87.

¹⁸ Dworkin, *Sovereign Virtue*, 162.

The reason for this is that, by treating racial discrimination as something that we should respond to with the model of fair insurance, we treat it as a fixed and given threat, in the same way that we treat bad brute luck with respect to the marketability of one's talents, say. But, this is not the case: racial discrimination is not a fixed and given threat; it is something that we ought simply to stamp out.¹⁹

Fourth, and most importantly, let me clarify the fundamental idea that supports the model of fair insurance. Insurance markets operate by offering protection against risk and, in the case of the model of fair insurance, the risk of suffering disadvantage as a result of the differential impact of brute luck in personal resources. When an individual purchases insurance, she agrees to pay a premium and, in return, she becomes entitled to a corresponding indemnity if the risk that she insures against materialises. The indemnity mitigates or eliminates the disadvantage she would otherwise suffer and so, in effect, the insurance policy offers protection against a certain level of risk.

For an insurance market to be fair, it must satisfy three conditions.²⁰ First, each individual must enjoy an equal opportunity to take out insurance on equal terms. We can model this by assuming (i) that each individual has an identical sum with which to insure, and (ii) that every insurance firm must offer the same packages on identical terms to every individual. Without this assumption, those with less wealth and those believed to have a greater likelihood of becoming a victim of bad brute luck would find it more costly to take out insurance, and so the insurance market would unfairly disadvantage them. Second, we must also assume (iii) though each individual is aware of the average likelihood of any individual becoming a victim of bad brute luck, she is

¹⁹ See Halliday, 'Inheritance and Hypothetical Insurance'.

²⁰ Dworkin, *Sovereign Virtue*, 77-8.

unaware of her own specific likelihood of becoming a victim. Without this assumption, it would be possible for her to exploit her epistemic position, and so the insurance firms would soon either go bankrupt or fail to offer much insurance. Finally, we must also assume that (iv) both insurers and insurance firms have (near) perfect information about the costs and effects of different policies. Without this assumption, insurance firms could not accurately determine which offers to make, and insurers could not know which policies best serve their interests.

In allowing each individual's level of protection against risk to depend upon the premiums that she pays, the model of fair insurance ties each individual's entitlements to the liabilities that she is willing to bear. This feature of the model ensures that it is self-financing, in the sense that the premiums that each individual pays finances the protection against risk it in turn provides. This ensures that we will not need to syphon off funds from elsewhere in order to protect individuals' just entitlements.²¹ An implication of this is that insurance firms must sell their policies at a rate that allows them to break even. The price of an insurance package must therefore reflect not only the insurance firm's expected indemnity costs, but also the necessary administration costs.²²

To help concretise what I have said so far, it may help to introduce an example that illustrates the way in which the mode of fair insurance identifies the just response to instances of bad brute luck in personal resources. To do this, let's consider the following case, discussed by Dworkin:

²¹ Dworkin, '*Sovereign Virtue Revisited*', 110.

²² Being agents of justice, these insurance firms need only break even, and need not make profit. For this reason, I exclude the costs associated with the desire for profit from my formulation of the model of fair insurance. See also Robert van der Veen, 'Equality of Talent Resources: Procedures or Outcomes?', *Ethics*, 113 (2002), 55-81 at 71, n. 25.

The Luck of the Draw: Imagine a disabling disease that is in no degree either genetic or class biased, and that strikes people randomly but only after the age of forty, and suppose a community in which wealth is distributed fairly and all citizens are below that age. The insurance approach requires the community to offer insurance against contracting the disease, at market rates, either privately through commercial insurers or publicly through a state program, so that citizens can decide for themselves whether to buy such insurance and at what level of coverage.²³

Each individual may take out a different level of insurance cover. These differences reflect the differences both in attitudes towards risk and in attitudes towards the various states of affairs that they may encounter. Whereas one individual may be willing to gamble by refusing to take out any insurance, another may play safe in order to guarantee protection against suffering a certain level of disadvantage. Similarly, whereas one individual may be indifferent to contracting the disease, and will therefore not take out any insurance, another may be willing to pay costly premiums in order to protect herself against the risk. I shall not say anything in defence of this approach here, since I take up this task in section 5.4.

An immediate objection to this presentation of the model of fair insurance appeals to the fact that neither the real world nor any attractive and feasible world resembles *The Luck of the Draw*. This is because we do not live, and do not wish to live, in a society in which (i) each individual has an identical sum with which to insure, and (iii) each individual is unaware of her own likelihood of suffering bad brute luck in her personal resources. As Dworkin notes:

Some people are born with handicaps, or develop them before they have had sufficient knowledge or funds to insure on their own behalf. They cannot buy insurance after the event. Even handicaps that develop later in life, against which

²³ Dworkin, *Sovereign Virtue*, 342.

people do have the opportunity to insure, are not randomly distributed through the population, but follow genetic tracks, so that sophisticated insurers would charge some people higher premiums for the same coverage before the event.²⁴

For these reasons, we can seldom respond to instances of bad brute luck in personal resources by using actual insurance markets. Our alternative is instead to engage in counter-factual speculation in order to determine the entitlements that an individual would have had, if she had access to a fair insurance market. When stated in these terms, it becomes clear that the model of fair insurance is in this respect epistemically demanding. This is because, in order successfully to deploy the model, we must consider difficult counterfactual questions regarding how each individual would have chosen under conditions other than those that actually obtain.

One way in which we can make progress with these difficult questions is to proceed in a statistical rather than individualised manner.²⁵ For example, we could determine the just response to bad brute luck by referring to the insurance decisions that would be made by individuals *on average*. This is substantially less epistemically demanding than trying to determine how each individual would have acted under the specified conditions. Though not ideal in all respects, this approach has certain clear merits. Indeed, Arneson points out the following:

the stockbroker taxed to the hilt who ponders the fate of his talented, willfully unemployed brother-in-law who surfs, lives happily, and pays little or no taxes, can take comfort in the knowledge that he is not the victim of arbitrary discrimination – *ex hypothesi*, there is no more efficient way of attaining society's goals of distributive justice.²⁶

²⁴ Ibid., 77.

²⁵ Ibid., 340-6.

²⁶ Arneson, 'Property Rights in Persons', 207.

To be sure, even if we favour the statistical approach rather than the individualised approach, it is not obvious that we should appeal to the *average* insurance decision in order to determine the just response. There are several reasons for this. I shall mention two possibilities. First, it could be that it is worse for an individual to assume risk that she would not have wanted to assume, than to impose on her a premium for an insurance policy that she would not have wanted to take out. If this were the case, even if by working with the average, such that there are equal numbers of individuals receiving more and less protection that they would have under an individualised scheme, this would remain objectionable, given the asymmetrical burdens imposed on those forced to assume risk that they would not have wanted to assume.²⁷

Second, it could be that, when we act on an individual's behalf, as the model of fair insurance requires, we ought not always to do as she would have done.²⁸ One reason for this is that, at least under some conditions, there is a moral asymmetry between harming and benefiting, such that it is worse to harm an individual than it is to fail to benefit her by the same amount.²⁹ It may be worse to harm an individual by taking £1,000 from her than it is to fail to benefit her by £1,000, such that we ought not to flip a coin for £1,000 on her behalf, even if we know that she would have taken

²⁷ For discussion of these claims, albeit within a different context, see Robert Goodin, *Political Theory and Public Policy* (Chicago: University of Chicago Press, 1982), chs 8-9. I thank Paula Casal for discussion of this point.

²⁸ Others assume (without argument) that this is false. See Michael Otsuka and Alex Voorhoeve, 'Why It Matters That Some Are Worse Off Than Others: An Argument against the Priority View', *Philosophy & Public Affairs*, 37 (2009), 171-99 at 173. I thank Victor Tadros for discussion of this point.

²⁹ For a defence of this claim, see Seana Shiffrin, 'Harm and its Moral Significance', *Legal Theory*, 18 (2012), 357-98.

the gamble. Because of this, we may have reason to be more risk-averse than otherwise when operationalising the model of fair insurance.³⁰ I shall not evaluate either of these possibilities here. I mention them only to highlight the complexities that they raise. For now, I shall proceed on the basis of the assumption that we should be guided by the average insurance decision.

To conclude, I shall also provide a second response to the worry about the epistemic demandingness of the model of fair insurance. This response makes use of the fact that, as Dworkin points out, the model of fair insurance none the less provides ‘a structure within which a public debate could usefully take place, a structure that both sets the terms of argument and provides limits to the range of answers that any side could in good faith take to be plausible’.³¹ To the extent that the aim of the model is to help us with this task, this level of epistemic demandingness is not fatal.

5.3 Fair Insurance and Background Conditions

Before we can speculate about insurers’ decisions, we first need better to understand the choices that they face. This is because the model of fair insurance yields determinate results only if we specify in further detail the rights that an individual would enjoy were she to purchase or fail to purchase a given insurance policy. Society’s background conditions determine this information.³² In this section, I highlight two ways in which these background conditions may constrain an insurer’s decisions.

³⁰ For further discussion of this claim, see Luc Bovens, ‘Concerns for the Poorly Off in Ordering Risky Prospects’, *Economics and Philosophy* (forthcoming).

³¹ Dworkin, *Sovereign Virtue*, 322.

³² Ibid., ch. 3. See also Colin MacLeod, *Liberalism, Justice, and Markets: A Critique of Liberal Equality* (Oxford: Clarendon, 1998), 168-70.

5.3.1 The Basic Rights Constraint

First, as noted several times, the model of fair insurance helps us to select between various arrangements and distributions of work that are consistent with the protection of basic rights. A consequence of this is that, when considering an insurer's decisions, we should do so against an institutional background that protects these basic rights. We can call this the *basic rights constraint*.³³

The basic rights constraint is important, since these background conditions affect the appeal of various insurance policies. This is because these conditions determine the severity and likelihood of occupational disadvantage that an individual risks suffering. To illustrate this point, it may help for us to consider an example. Let's suppose that it is possible to justify an unconditional basic income exclusively by reference to the role that this policy plays in protecting basic rights. If this were the case, it would not make sense to consider whether we could (also) justify the policy by referring to the model of fair insurance. Fairly obviously, this is because insurers would have no reason to take out such a policy, were the protections that it promised already in place. In fact, if there is already protection in place, there is in fact no risk to be insured against.

This conclusion presents a problem for the ambitions of this and the following chapter. It implies that we cannot speculate about the decisions of insurers unless we first clarify which social institutions best protect individuals' basic rights, which is an issue that I have not considered in any detail. This is a genuine worry. My response is

³³ To be sure, the basic rights constraint may not be the only constraint. Other constraints may be generated by our concern for other features of political morality, such as our concern to ensure a just legal system and our concern to ensure legitimate government through the protection of democratic procedures, say. See Dworkin, *Justice for Hedgehogs*, chs 12 and 13.

to emphasise the modesty of my earlier conclusions: whilst our concern for basic rights justifies some interventions in the job market, these interventions are fairly minimal. Contrary to what some have argued, our concern for basic rights does not justify extensive job market regulation, perhaps in the form of job sharing, worker ownership, or an unconditional basic income, for example. Rather, we can protect these basic rights by more targeted measures that do not demand great interference in the job market. This reply exploits the fact that we do not need to know precisely which social institutions we can justify by appeal to basic rights. We need to know only that our concern for basic rights does not justify extensive job market regulation of the kind that pre-empts the initiatives that we shall later consider.

5.3.2 The Consent Constraint

Let's turn now to the second way in which background conditions may affect an insurer's decisions. To help frame the issue, let's begin by considering a case in which an insurance firm offers individuals the opportunity to buy into a Survival Lottery, whereby, if any two members of the scheme need vital organ transplants in order to survive, a lottery is carried out amongst all of the scheme's members in order to determine who must provide the two vital organs.³⁴ Let's further assume that this scheme would be attractive to many insurers, ignorant of their likelihood of needing a vital organ transplant. Even under these conditions, it is not obvious that we can justify coercive vital organ transplants on these grounds. In other words, even if we knew that a given individual, Qadira, would have bought into the Survival Lottery, this looks insufficient to justify taking Qadira's organs if her name were pulled out of the hat.

³⁴ John Harris, 'The Survival Lottery', *Philosophy*, 50 (1975), 81-7.

This is because merely hypothetical consent is sometimes not enough.³⁵ To see the importance of actual consent (as opposed to merely hypothetical consent), we can note that the Survival Lottery seems less problematic when actual consent is given, even if it remains morally problematic in certain ways.³⁶ If correct, the upshot of this is that a Survival Lottery is not the kind of policy that we can justify by appeal to the model of fair insurance.

I mention this case to make a more general point: there may be limits on the model of fair insurance that correspond to the limits of the moral force of hypothetical consent. If an individual can waive a given right only by giving actual consent and not merely hypothetical consent, then the fact that she would have waived that right under certain conditions cannot help us in justifying regulations that do in fact violate that right. We can call this the *consent constraint*.

There may be an intimate relationship between the basic rights constraint and the consent constraint. More specifically, the two may converge. This would be the case if the set of rights that could not be waived by merely hypothetical consent were identical to the set of basic rights. Moreover, it could even be that this convergence is non-accidental. This would be the case if we should determine the set of rights that could not be waived by merely hypothetical consent by referring to the set of basic rights. On this view, the explanation for why merely hypothetical consent is not enough in the Survival Lottery appeals to the idea that individuals have a basic right to retain their vital organs.

³⁵ Tadros, 'Consent to Harm', 27.

³⁶ For discussion of what may make this case morally problematic even when actual consent is given, see Anne MacLean, *The Elimination of Morality: Reflections on Utilitarianism and Bioethics* (London: Routledge, 1993), ch. 7.

Other people may favour an alternative account of the relationship between the basic rights constraint and the consent constraint. One possibility is that the two constraints diverge such that there may be non-basic rights that cannot be waived by merely hypothetical consent. Some people think this about the right to self-ownership. If this were the case, we would not be able to appeal to the model of fair insurance in order to justify any form of job market regulation that violates self-ownership, even though the right to self-ownership is not a basic right. Depending upon how we understand self-ownership, this could significantly reduce the menu of options that insurers face.

My aim in this section is not to develop an account of the relationship between the basic rights constraint and the consent constraint, nor shall I here comment on whether we ought to accept a right to self-ownership and its implications. Instead, my more modest aim is merely to highlight two ways in which a society's background conditions constrain the decisions of insurers. I shall say more about the content of these constraints, and a right to self-ownership in particular, in the next chapter. The important point to note for now is that any satisfactory defence of disadvantage-based job market regulation must meet two challenges. First, a defender must show that the policy would be attractive to many individuals, perhaps including the average individual. Second, she must show that the policy satisfies both the basic rights constraint and the consent constraint.

To be sure, in discussing these two constraints, I do not mean to imply that these are the only relevant conditions that affect insurers' decisions. As I shall explain in chapter 7, we also have reasons to restrict the menu of options available to insurers to those policies compliance with which is publicly verifiable to all relevant parties. This gives us reasons to rule out policies that are highly epistemically demanding. I do not focus on this consideration here for two reasons. First, my discussion of this

consideration is complex and it would risk derailing us from the present task, which is to theorise about the just response to occupational disadvantage. Second, though sometimes relevant, this consideration is not decisive in any of the cases that I consider in this and the following chapter. For these reasons, I believe it is best (temporarily) to put it to one side.

5.4 Fair Insurance and Occupational Disadvantage

Having outlined the structure of the model of fair insurance, I shall now demonstrate its relevance for theorising about the just response to occupational disadvantage. The argument begins with the thought that one way in which an individual can suffer bad brute luck in her personal resources relates to the level of marketability of her talents. Whereas some individuals have talents that are much sought after, other individuals have talents that are not in demand. It is worth noting that I mean to refer specifically to that aspect of talent that an individual is not responsible for developing. That component of an individual's talent with which we are concerned is determined not only by her genetics, but also through her upbringing, including parts of her education. For simplicity, I shall refer to individuals whose talents are much sought after as *talented*, and to individuals whose talents are not in demand as *untalented*.³⁷

There is an intimate connection between an individual's talents and her likelihood of suffering occupational disadvantage. This is because an untalented individual possesses a lesser degree of bargaining power in the job market than a talented one. A consequence of this is that she will have available to her less valuable

³⁷ This definition is wider than the definition offered by Cohen, who focused only on the capacity to earn a high salary. Cohen's definition is, therefore, blind to the other advantages enjoyed by individuals with talents that are highly sought after. See Cohen, *Rescuing Justice and Equality*, 120-1.

occupational opportunities than others do. This is a claim not only about how job markets do in fact operate, but also how they would operate even if we were to ensure certain background conditions, such as the protection of basic rights. An upshot of this is that it makes sense to appeal to the model of fair insurance in order to theorise about the just response to occupational disadvantage. In an important respect, lacking marketable talents is similar to having a disabling disease. As Dworkin puts it, “Though skills are different from handicaps, the difference can be understood as one of degree: we may say that someone who cannot play basketball like Wilt Chamberlain, paint like Piero, or make money like Geneen, suffers from an (especially common) handicap’.³⁸

On this view, the just response to occupational disadvantage is to regulate the job market to grant each individual the occupational entitlements that she would have had, if she had enjoyed access to a fair insurance market. That is, we should consider the insurance decisions that each individual – or, perhaps, the average individual – would take out if fair insurance were available, and then use political power to mimic these decisions. Dworkin appeals to the model of fair insurance to justify the introduction of a legal minimum wage, as well as financial transfers to those individuals unable to find employment. Elaborating on this, he writes:

We can insist that our officials use at least that coverage level as a guide to redistributive programs of different kinds. We might aim to collect from the community, through taxes, an amount equal to the aggregate premium that would have been paid for universal coverage at that level and then distribute, to those who need it, services, goods, or funds that match what that coverage would have provided them in virtue of their bad luck. We would fund unemployment and low wage insurance.³⁹

³⁸ Dworkin, *Sovereign Virtue*, 92.

³⁹ Dworkin, *Justice for Hedgehogs*, 361. See also Dworkin, *Sovereign Virtue*, 331-40.

Dworkin includes ‘at least’ in the first sentence, since there may of course be other reasons to exercise political power to introduce job market regulation. In particular, we have reasons to protect basic rights, as well as, perhaps, paternalistic reasons to regulate the job market in certain ways.⁴⁰

No doubt Dworkin is correct to conclude that, were there a fair insurance market, many individuals, including the average individual, would take out an insurance policy that protects a legal minimum wage, as well as provides financial transfers to those individuals unable to find employment. I defend this claim more fully in the next chapter. For now, what is significant is that additional insurance packages are also available, such that it may be possible to justify further disadvantaged-based job market regulation in a similar way.

To illustrate this point, let’s consider interventions designed to promote greater job sharing. To take an example close to home, let’s consider legal regulation that requires each academic to clean her own office in order to lower the workload for cleaners, and thus allows cleaners greater leisure time than they currently have. What is the insurance decision that each individual faces with this policy? First, the policy offers each individual protection against having to work long hours as a cleaner, since it decreases cleaners’ workloads. Second, the policy is ‘funded’ by imposing a requirement on each academic to clean her own office. This policy may be popular

⁴⁰ Ibid., 75. For further discussion of the significance of these other reasons to Dworkin’s political philosophy, see Zofia Stemplowska, ‘Rescuing Luck Egalitarianism’, *Journal of Social Philosophy*, 44 (2013), 402-19; and Andrew Williams, ‘Liberty, Equality, and Property’, in John S. Dryzek, Bonnie Honig, and Anne Phillips (eds), *The Oxford Handbook of Political Theory* (Oxford: Oxford University Press, 2008), 488-504; and Andrew Williams, ‘How Gifts and Gambles Preserve Justice’, *Economics and Philosophy*, 29 (2013), 65-85 at 69. See also Elizabeth Anderson, ‘How Should Egalitarians Cope With Market Risk?’, *Theoretical Inquiries in Law*, 9 (2008), 239-70.

amongst those insurers who strongly disvalue having to work long hours as a cleaner, those insurers who do not disvalue having to clean one's own office, as well as those insurers who experience some combination of the two.

For the purposes of this chapter, I am not interested in whether or not many individuals, including the average individual, would select this policy, were there a fair insurance market. Nor am I interested in whether such a policy meets the basic rights constraint and the consent constraint. I address these questions in the next chapter. The point of mentioning this example is simply to illustrate the versatility of the model of fair insurance for justifying a range of disadvantage-based job market regulations. More specifically, it is noteworthy that the model can justify policies that are not at all concerned with cash transfers. In the present case, the indemnity takes the form of greater leisure time, and the premium takes the form of a requirement to clean one's own office. This conclusion is noteworthy since some commentators, such as Mason, have rejected the model of fair insurance partly on the mistaken basis that the model lacks this flexibility.⁴¹

5.5 The Appeal of Fair Insurance

I shall now contrast the model of fair insurance with three rival accounts of the just response to occupational disadvantage: the *libertarian account*, the *elimination account*, and the *pluralist account*. First, the libertarian account states that we ought not to mitigate or to eliminate occupational disadvantage.⁴² According to this view, whilst an individual may have a duty to use her own resources to mitigate occupational disadvantage, she

⁴¹ Mason, *Levelling the Playing Field*, 152. See also MacLeod, *Liberalism, Justice, and Markets*, 105-9.

⁴² For a defence of this kind of view, see Jan Narveson, 'On Dworkinian Equality', *Social Philosophy and Policy*, 1 (1983), 1-23.

lacks an unenforceable duty to act in this way, and thus we ought not to use political power to force her to do so. The familiar problem with this view is that it shows too great a disregard for the interests of victims of bad brute luck. If we can eliminate occupational disadvantage effectively and cheaply, say, by enhancing an individual occupational opportunities, it is clear that we ought to do so, and that it would be morally impermissible for us to fail to do so. We can call this the *rescue objection*.

By contrast, the elimination account states that the just response to occupational disadvantage is to eliminate it, where possible. This account takes seriously the fact that it seems unfair for an individual to have fewer or less valuable occupational opportunities than another through no fault or responsibility of her own. An attractive feature of this view is that it avoids the rescue objection. However, the problem with the elimination account is that it shows too great a disregard for opportunity costs. Put simply, it is implausible to maintain that we ought to eliminate occupational disadvantage when we can achieve this only through the provision of enormously expensive assistance or risk-protection that would impoverish the rest of the community.⁴³ The source of this problem lies in the fact that the elimination account provides no upper bound to the resources that we should spend on assistance and risk-protection.⁴⁴ We can call this the *opportunity costs objection*.

The pluralist account improves on the previous two accounts. It states that we have a weighty reason to eliminate occupational disadvantage, but that this reason is defeasible. When the provision of assistance or risk-protection is enormously expensive, the reason is defeated by other reasons, such as our reason not to

⁴³ For more on the difference between ‘assistance’ and ‘risk-protection’ and our reasons to favour the latter, at least under certain conditions, see Adam Slavny, ‘Negating and Counterbalancing: A Fundamental Distinction in the Concept of a Corrective Duty’, *Law and Philosophy*, 33 (2014), 143-73.

⁴⁴ Dworkin, *Sovereign Virtue*, 80.

impoverish the rest of the community. The pluralist account finds the middle-ground that is invulnerable to both the rescue objection and the opportunity costs objection.

There are two problems this view, however. First, it is not clear that we have *any reason* – even a defeated one – to provide assistance or risk-protection that is enormously expensive. Because of this, the pluralist account mischaracterises our moral landscape. We can call this the *mischaracterisation objection*. Of course, this is not to deny that it is highly regrettable when an individual suffers occupational disadvantage that is enormously expensive to eliminate. Second, the pluralist account provides no practical guidance because it is not clear how to balance our competing reasons. Again, this problem is not merely epistemic. Rather, it fails even *in principle* to provide us with any guidance about how to weigh our concern for the elimination of occupational disadvantage against other considerations.⁴⁵ Following Williams, we can call this the *problem of judgment*.

The failures of the libertarian account, the elimination account, and the pluralist account illuminate four constraints on a satisfactory account of the just response to occupational disadvantage. It must be immune to: (i) the rescue objection; (ii) the opportunity costs objection; (iii) the mischaracterisation objection; and (iv) the problem of judgment.

The model of fair insurance meets these challenges. With respect to (i), it justifies eliminating occupational disadvantage when we can do this effectively and cheaply. This is because, being cheap, these insurance policies would be popular amongst individuals, were they available on fair terms. With respect to (ii), the model of fair insurance justifies refraining from eliminating occupational disadvantage when

⁴⁵ See Andrew Williams, 'Equality, Ambition, and Insurance', *Proceedings of the Aristotelian Society*, 78 (2004), 131-50 at 131-2.

doing so is enormously expensive. This is because, being so expensive, these insurance policies would not be popular amongst individuals, even if they were available on fair terms. With respect to (iii), it implies that there is no reason to provide assistance or risk-protection that is enormously expensive, since, following the previous point, these insurance policies would not be popular amongst individuals, even if they were available on fair terms. Finally, with respect to (iv), I hope that it is clear that, despite the epistemic complexities involved, the model provides principled practical guidance that can guide public debate and limit the answers that any side can in good faith take to be plausible.

The aim of this section has not been to show conclusively that we should accept the model of fair insurance. There remain many important objections to address, and I shall respond to some of these later. Rather, my more modest aim has been to illuminate some of the appeal of the model and to indicate a number of ways in which it is superior to rival approaches. I shall continue with this task in the next section, where I defend the liberal credentials of the model of fair insurance.

5.6 Fair Insurance and the Liberal Principle of Legitimacy

The model of fair insurance identifies the just response to occupational disadvantage by referring to individuals' own attitudes towards risk and the various states of affairs that they may encounter. This feature of the model is highly attractive. This is because, as Dworkin notes, 'it allows people to make decisions about the relative importance of various risks for themselves, so that they can tailor their use of their own resources to their own judgments, ambitions, tastes, convictions, and commitments'.⁴⁶ Though the

⁴⁶ Dworkin, *Sovereign Virtue*, 344.

appeal of the model of fair insurance may diminish somewhat if epistemic complexities force us to proceed in a statistical rather than individualised manner, it remains strong. This is because, as I earlier noted, an individual who is treated on the basis of a judgment about the average individual can take comfort in the fact that there is no more efficient way of meeting the stated goal.

This feature of the model is an attractive one, for it enables us to justify disadvantage-based job market regulation on the basis of reasons that individuals themselves accept, rather than on the basis of more controversial reasons that we cannot reasonably expect all individuals to accept.⁴⁷ More specifically, the model of fair insurance enables us to justify disadvantage-based job market regulation in a way that appeals neither to controversial claims about the content of the various components of desirable and undesirable jobs, nor to controversial claims about the respective comparative value of the various components of desirable and undesirable jobs. As a consequence, it promises to provide a defence of disadvantage-based job market regulation that is consistent with the liberal principle of legitimacy, and thus meets the challenge set in section 5.1.

A further related advantage of the model of fair insurance is that it determines not only the *extent* of the level of assistance or risk-protection to which individuals are entitled, it also determines the *form* that the assistance or risk-protection should take. As I made clear when discussing job sharing, insurance firms may offer policies that involve regulation other than cash transfers. The model directs us towards each individual's own insurance decisions to arbitrate between the various forms that assistance or risk-protection can take. In short: just as it consults individuals' attitudes

⁴⁷ This feature of the model is emphasised in William Baumol, *Superfairness* (Cambridge, MA.: The MIT Press, 1986), 18; and Matthew Clayton, 'Liberal Equality and Ethics', *Ethics*, 113 (2002), 8-22 at 10-11.

to determine the extent of her assistance or risk-protection, so too it consults individual's attitudes to determine the kind of policies that we should enact. In this respect, the mode of fair insurance is more informative than rival models, such as the elimination account and the pluralist account, that seek only to determine the extent of assistance or risk-protection.

Before defending more fully this way of theorising about disadvantage-based job market regulation, it is important first to consider an aspect of the model that I have until now neglected. Previously, I said that the model of fair insurance states that we ought to grant each individual the occupational entitlements that she would have had, if she had enjoyed access to a fair insurance market. Strictly speaking, the model actually states that we ought to grant each individual the occupational entitlements that she would have had, if she had enjoyed access to a fair insurance market, *and* if had she acted prudently when making her insurance decisions.⁴⁸

Focusing on individuals' prudent insurance decisions is attractive for the familiar reason that, when authorised to act on another's behalf, we often ought to select the option that she would have chosen had she acted prudently, rather than imprudently, even if it is known that she would in fact have acted imprudently. If Roberta is authorised to take out an insurance policy on behalf of Sian, the fact that Roberta knows that Sian would take out the first insurance policy because of some irrational hatred of spending time talking to insurance firms clearly does not supply Roberta with a reason to select for Sian the first policy.⁴⁹ Properly understood, the model of fair insurance is ambition-sensitive, rather than choice-sensitive.

⁴⁸ Dworkin, *Sovereign Virtue*, 332.

⁴⁹ There are limits to this. If Sian had actually formed the judgment that she would like to select the first insurance policy, then it may be appropriate for Roberta to select that policy for Sian, if authorised to act on her behalf. Since we are not considering cases in which an individual has already formed such a

This amendment of the model has, though, led to two objections. First, by shifting the focus onto individuals' prudent choices, the amendment may be thought to compromise the model's liberal foundations. In particular, one might allege that the appeal to prudence smuggles in a controversial account of how each individual should act, which is inconsistent with the liberal principle of legitimacy. That is, perhaps it invites a defender of the model illiberally to disregard as 'imprudent' atypical insurance decisions with which she disagrees. We can call this the *smuggling objection*.

Second, one might claim that the appeal to prudence risks making the entire model of fair insurance theoretically redundant. For example, Colin MacLeod claims that 'Once the focus shifts directly to the question of what constitutes reasonable compensation for a disability or a prudent amount of healthcare, the insurance market apparatus becomes superfluous'.⁵⁰ Arneson presses the same objection.⁵¹ If correct, this would suggest that the appeal to prudence turns the model into a heuristic that is incapable of doing any justificatory work when identifying the just response to occupational disadvantage. We can call this the *redundancy objection*.

In order to meet the smuggling objection and the redundancy objection, we must distinguish two definitions of prudence. The first definition associates prudence with appropriate caution and, more generally, with what is best for one's life in the long-run. To act prudently is to act in a way that shows care and thought for the future. The second definition associates prudence with rationality – that is, with pursuing the most efficient course of action. Thus, prudence is a property of the relationship between an individual's ambitions and the means she chooses to pursue

judgment, I can put these complications to one side. For further discussion, see Victor Tadros, 'Invalid Consent', (unpublished manuscript).

⁵⁰ MacLeod, *Liberalism, Justice, and Markets*, 96.

⁵¹ Arneson, 'Dworkin and Luck Egalitarianism'.

them. This second definition of prudence is content-neutral, in the sense that it is silent about the content of an individual's ambitions.⁵²

Following Dworkin, I favour the second definition of prudence. Individuals insure prudently when they insure 'in a way appropriate to their dominant hopes, fears, tastes, and values'.⁵³ The reason for adopting this definition of prudence is as follows. If we adopt the first definition of prudence, then the model of fair insurance would be vulnerable to the smuggling objection, since it would rely upon appeals to reasons that are inconsistent with the liberal principle of legitimacy. The commitment to live cautiously or to concern oneself with one's long-term interests is not one that we can reasonably expect all individuals to endorse in the light of principles and ideals acceptable to their common human reason. By contrast, however, if we adopt the second definition of prudence, the objection loses its force. This is because this definition of prudence is silent with respect to what makes an individual's life a success. Being ecumenical in this respect, this definition of prudence is not inconsistent with the liberal principle of legitimacy.

Similarly, by adopting the second definition of prudence, the model of fair insurance escapes the second objection, canvassed by MacLeod and Arneson. This is because, if we adopt the second definition of prudence, the model operates not on the basis of what we – me, you, or Dworkin – regard as reasonable, but instead on the basis of individuals' own attitudes. That is, for us to justify disadvantage-based job market regulation, we must offer to each individual reasons that we can reasonably expect her to accept. This is a considerable advantage of the model of fair insurance, even if we are forced to proceed in a statistical rather than individualised manner.

⁵² Brian Barry, *A Treatise on Social Justice*, vol. 1. (Berkeley: University of California Press, 1989), 61.

⁵³ Dworkin, *Sovereign Virtue*, 332.

5.7 The Equality Objection

The model of fair insurance draws some of its force from the conclusions it reaches when applied to cases such as *The Luck of the Draw*. Thus, one way in which to challenge the appeal of the model is to challenge its analysis of these kinds of cases. In this and the next section, I consider and respond to two such objections: the *equality objection* and the *reverse transfers objection*.

The equality objection states that, in addition to reasons to exercise political power in the way that the model of fair insurance suggests, we have a further defeasible reason to ensure that no individual is worse off than another through no fault or responsibility of her own. With respect to *The Luck of the Draw*, the model of fair insurance requires that we offer fair insurance against contracting the disease so that each individual can decide for herself whether to buy protection and, if so, at what level of coverage. A defender of the equality objection denies this. She believes that, in addition to the provision of such an insurance market, we have a further defeasible reason to eliminate the inequality between those individuals who contract the disease and those who do not.

Applied to occupational disadvantage, the equality objection states that, in addition to the reason to grant each individual the occupational entitlements that she would have had, if she had enjoyed access to a fair insurance market, we have a further defeasible reason to eliminate occupational disadvantage. If correct, this suggests that the model of fair insurance may under-provide in terms of disadvantage-based job market regulation. This is because, so the objection goes, the model wrongly permits occupational disadvantage that we may have reason to eliminate. To clarify this disagreement, it may help to consider the following case:

The Luck of the Occupational Draw: As a result of some unlikely genetic mutation, individuals' talents develop suddenly and randomly at age twenty. Tina is soon to be twenty and she enjoys access to a fair insurance market. Because of her attitude towards risk, Tina purchases only minimal protection against the risk of suffering occupational disadvantage. Soon after, Tina develops talents that are not highly sought after and, as result, suffers a degree of occupational disadvantage.

The model of fair insurance entails that Tina is not a victim of injustice simply in virtue of the occupational disadvantage that she suffers. This is because Tina enjoyed access to a fair insurance market. Proponents of the equality objection deny this: they maintain that Tina's occupational disadvantage may give rise to a complaint of injustice. In particular, proponents of this objection assert that we have a defeasible reason to eliminate Tina's occupational disadvantage, and that this reason may justify introducing further disadvantage-based job market regulation.

A defender of the equality objection can support her position in different ways. That is to say, she can invoke different arguments in defence of this verdict. In the remainder of this section, I consider three such arguments. In each case, I show that the argument in defence of the equality objection is not compelling, and thus the objection fails to provide grounds upon which to reject the model of fair insurance.

5.7.1 The Justice Argument

One way in which a defender of the equality objection can support her position is to invoke the *justice argument*. Cohen is a leading proponent of this argument.⁵⁴ According to the justice argument, the fact that disadvantage results from a gamble is never sufficient to render that disadvantage just. In Cohen's words, the argument maintains

⁵⁴ Cohen, *On the Currency of Egalitarian Justice*, 124-45.

that gambles never ‘preserve the justice that renders the pregambling situation just’.⁵⁵ In support of this conviction, Cohen invites us to consider a case in which two individuals each gambles half of their \$100,000 estate against half of the other’s, on the flip of a coin. Given that each individual takes an identical risk, there may appear to be something unjust about ‘the fact that one of the people emerges with \$150,000, which is three times the assets that the other one comes to have’.⁵⁶

Speculating about the consequences of this conclusion, Cohen claims that ‘while we might be unwilling to enforce a reversal of the gamble’s outcome, we might also be unwilling to enforce the outcome itself’. He then adds that ‘we might think that the proceeds of gambling are more legitimately taxable than some other types of income’.⁵⁷ If correct, the justice argument would show that Tina’s occupational disadvantage permitted by the model of fair insurance in *The Luck of The Occupational Draw* is unjust and, consequently, we may have a further defeasible reason to eliminate the disadvantage beyond what the model sanctions.

The problem with the justice argument is that it is not clear why, as a general matter, we have any reason to eliminate disadvantage that results from gambles. This is because, in eliminating this disadvantage, we effectively subsidise the risky choices of those individuals who gamble and ‘lose’, by penalising those who gamble and ‘win’.⁵⁸ This feature of the justice argument is especially troubling given that both ‘winners’ and ‘losers’ prefer not to prohibit gambling. The model of fair insurance avoids this problem by enforcing the gamble’s outcome.

⁵⁵ Ibid., 132.

⁵⁶ Ibid.

⁵⁷ Ibid., 141.

⁵⁸ Mason, *Levelling the Playing Field*, 180.

5.7.2 The Disadvantage Argument

A second way in which a defender of the equality objection can support her position is to invoke the *disadvantage argument*. A leading proponent of this argument is Michael Otsuka.⁵⁹ To illustrate this argument, let's consider a version of *The Luck of the Occupational Draw* in which, because the risks are enormously expensive to provide assistance for or to protect against, the only insurance policies available to Tina are unaffordable or affordable only at an enormous cost. When this is the case, Tina's occupational disadvantages will be unavoidable, in the sense that she could not take out an insurance policy that provides assistance or risk-protection. According to Otsuka, this casts doubt upon the acceptability of the resulting disadvantage. After all, when the risk materialises, Tina suffers bad brute luck that she could not protect herself against. As a consequence, so the objection goes, the model of fair insurance permits disadvantage that we have reason to eliminate.⁶⁰

Before we can evaluate the disadvantage argument, it is first necessary to attend to an ambiguity regarding the role that (dis)advantage might play in our moral reasoning. One way in which to understand (dis)advantage is as an axiological property – that is, as a property of valuable or morally good states of affairs. On this view, to claim that an individual is disadvantaged is to claim that it is in one way a less valuable or morally good state of affairs. We can contrast this role of (dis)advantage with a second one, whereby it is a reason-giving ideal. On this view, to claim that an

⁵⁹ Michael Otsuka, 'Luck, Insurance, and Equality', *Ethics*, 113 (2002), 40-54; and Michael Otsuka, 'Equality, Ambition, and Insurance', *Proceedings of the Aristotelian Society*, 78 (2004), 151-66.

⁶⁰ Mason similarly claims that the model of fair insurance is not consistent 'with the aim of neutralizing the effects of differences in natural endowments'. See Mason, *Levelling the Playing Field*, 152.

individual is disadvantaged is to claim that we have a reason to eliminate the inequality from which she suffers.

It is not always clear how best to interpret the disadvantage argument's appeal to disadvantage.⁶¹ It is telling that Otsuka concedes that the model of fair insurance 'might be sufficient to ensure that the ensuing pattern of distribution is fully just'.⁶² If we understand the disadvantage argument in this way, the complaint against it is not that it permits injustice, but instead that it generates outcomes that are in some sense regrettable. This suggests that, for the purposes of this objection, we should understand (dis)advantage as an axiological property. However, if this is the case, we can accept the point without abandoning the model. This is because a proponent of the model of fair insurance need not deny that the outcomes it generates may be regrettable. To put the point in another way, if we understand the disadvantage argument in this way, then it does not support the equality objection, which claims that we have a further defeasible reason to eliminate occupational disadvantage beyond that justified by the model of fair insurance.

5.7.3 The Unavoidability Argument

The third argument in defence of the equality objection is the *unavoidability argument*. This argument centres on the fact that, in an important sense, gambling is an unavoidable feature of the model of fair insurance. As MacLeod points out, 'The option of declining a risk is not open to the person in the insurance market. Whether she purchases extensive insurance coverage or declines any coverage whatsoever, she

⁶¹ My strategy here follows Williams, 'How Gifts and Gambles Preserve Justice'.

⁶² Otsuka, 'Luck, Insurance, and Equality', 158.

risks suffering losses. We all face some risk of suffering a disability and we cannot choose to avoid this risk altogether'.⁶³ According to the unavoidability argument, we have a special reason – that is, an additional reason – to object to disadvantage that is the product of unavoidable gambles. Even if, *pace* previous arguments, there is no reason to eliminate disadvantage that result from *avoidable* gambles, the unavoidability argument provides the theoretical resources to press the equality objection against disadvantages that result from *unavoidable* gambles.⁶⁴

To see the force of the unavoidability argument, let's again consider a case in which two individuals each gamble half of their \$100,000 estate against half of the other's, on the flip of a coin. However, this time let's also assume that each individual lacks the option to decline the gamble. When this is the case, perhaps we have a weighty reason not to enforce the gamble's outcome, thereby eliminating the disadvantage that results. If correct, this suggests that we may retain a reason to eliminate the disadvantage that results from unavoidable gambles. Applied to occupational disadvantage, the unavoidability argument yields the result that we may have a further reason to eliminate occupational disadvantage beyond what the model of fair insurance justifies.

The unavoidability argument fails. To see this, let me note that when we fail to enforce the gamble's outcome in the case above, we treat the individuals as if each had taken out an insurance policy securing maximal risk-protection. Generally speaking, this is the just response only if at least one individual, under fair conditions, prefers this result – that is, prefers maximal risk-protection. By contrast, if both individuals were, under fair conditions, to welcome the gamble, then it would be unjust not to enforce

⁶³ MacLeod, *Liberalism, Justice, and Markets*, 100.

⁶⁴ Ibid.

its outcome. Indeed, it would be odd not to enforce the gamble's outcome, since it would mean acting in a way that no individual, under fair conditions, would recommend. To put the point in another way: if we have a reason to eliminate disadvantages that result from unavoidable gambles, then we have a reason to force individuals to take out insurance policies securing maximal assistance or risk-protection in these cases, irrespective of whether or not, under fair conditions, they welcome the gamble. This is implausible, and an implication of this is that we should resist the unavoidability argument.

As before, the model of fair insurance avoids this problem appealing to individuals' own attitudes in order to determine the just response to disadvantage. As a consequence of this, those who justify disadvantage-based job market regulation by appeal to the model do so in a way that is consistent with individuals own recommendations, under fair conditions, about the best use of resources.

5.8 The Reverse Transfer Objection

Let's now turn our attention to the reverse transfers objection. To introduce this objection, let's consider the following variation on *The Luck of the Occupational Draw*:

Differential Occupational Luck: As a result of some unlikely genetic mutation, individuals' talents develop suddenly and randomly at age twenty. Una and Violet are soon to be twenty and each enjoys access to a fair insurance market. Una and Violet insure identically – each purchases insurance against occupational disadvantage that is cheap to mitigate, and each fails to purchase insurance against occupational disadvantage that is expensive to mitigate. Soon after, Una develops talents that produce occupational disadvantage that is comparatively small and cheap to mitigate, and Violet develops talents that produce occupational disadvantage that is comparatively large and expensive to mitigate.

The model of fair insurance seems to imply that, whereas Una is entitled to assistance for the occupational disadvantage she suffers, Violet is not entitled to this assistance. This is a counter-intuitive conclusion. Moreover, it seems also to imply that we may require Violet to finance the assistance that we provide to Una. After all, Violet has agreed to pay insurance premiums that may fund the assistance to which Una is now entitled. This is an even more counter-intuitive conclusion. Given that Violet's occupational disadvantage is much larger than Una's, the model of fair insurance seems to require the transfer of assistance in the wrong direction – that is, *from* individuals who are severely occupationally disadvantaged *to* individuals who are only mildly occupationally disadvantaged.⁶⁵ For example, this problem reveals how the model of fair insurance may implausibly demand that we reduce the material entitlements of those individuals who are involuntarily unemployed so that we have more resources with which to enhance the occupational opportunities of those in part-time employment, say. This is the reverse transfers objection.

The alleged vulnerability of the model of fair insurance to the reverse transfers objection follows from the fact that, at least under some conditions, it replicates the conclusions of utilitarianism. Utilitarians believe that there is a duty to maximise expected utility. The similarity between the model of fair insurance and utilitarianism is widely documented by John Roemer and Marc Fleurbaey, both of whom claim that a prudent insurer will seek to maximise her expected utility.⁶⁶ Dworkin's own initial treatment of the model also supports this interpretation.⁶⁷

⁶⁵ This implication of the model of fair insurance is illustrated in Marc Fleurbaey, 'Equality of Resources Revisited', *Ethics*, 113 (2002), 82-105 at 96-7.

⁶⁶ See Fleurbaey, 'Equality of Resources Revisited'; Marc Fleurbaey, *Fairness, Responsibility, and Welfare* (Oxford: Oxford University Press, 2008), 166-75; John Roemer, 'Equality of Talents', *Economics and Philosophy*, 1 (1985), 151-87; John Roemer, 'Equality of Resources Implies Equality of Welfare', *The*

The reverse transfers objection draws some of its appeal from the fact that, if we accept the model of fair insurance, no individual can decline to gamble. Perhaps the unavoidable nature of the risk imposed by the model in part explains our intuitive repulsion at the idea that we may require Violet to fund the assistance that we provide to Una. After all, if this result were the product of a gamble that Una and Violet had each avoidably undertaken, it is not clear that this conclusion would be at all perverse.⁶⁸

There are different ways in which we can rebut the reverse transfers objection. I shall mention two.⁶⁹ The first of these is not a rebuttal as such; rather, it merely softens the force of the objection. This reply challenges the claim that these alleged implications of the model of fair insurance are counter-intuitive. To see the merits of this reply, we must turn our attention to the opportunity costs of protecting against occupational disadvantage. In particular, we must bear in mind that sometimes, because of the considerable opportunity costs, it is justifiable not to provide assistance to an individual suffering severe occupational disadvantage, since we could use those resources more efficiently elsewhere, perhaps for the benefit of an individual who suffers less severe occupational disadvantage. For this reason, the present objection does not count decisively against the model of fair insurance.

Quarterly Journal of Economics, 101 (1986a), 751-84; John Roemer, 'The Mismatch of Bargaining Theory and Distributive Justice', *Ethics*, 97 (1986b), 88-110 at 103-09; John Roemer, 'Egalitarianism, Responsibility, and Information', *Economics and Philosophy*, 3 (1987), 215-44 at 221-43; Roemer, *Theories of Distributive Justice*, 252-6; John Roemer, 'Egalitarianism against the Veil of Ignorance', *The Journal of Philosophy*, 99 (2002), 167-84 at 178-81.

⁶⁷ Dworkin, *Sovereign Virtue*, 96.

⁶⁸ MacLeod, *Liberalism, Justice, and Markets*, 100.

⁶⁹ For discussion of these replies, see Dworkin, *Sovereign Virtue*, 349-50; Dworkin, 'Sovereign Virtue Revisited', 130-1 and 133; and T. M. Scanlon, 'Equality of Resources and Equality of Welfare: A Forced Marriage?', *Ethics*, 97 (1986), 111-18.

Importantly, however, this first reply can do only so much work. More specifically, though this reply explains why it is not implausible that we might not be required to assist individuals who suffer severe occupational disadvantage, it doesn't explain why those individuals are liable to take a further loss for the sake of those who suffer less occupational disadvantage. For this reason, we need a second reply to the reverse transfers objection.

The second reply denies this implication of the model of fair insurance, at least under a wide range of circumstances. This reply makes use of the fact that, in comparison with Violet, Una is not occupationally disadvantaged. This point is important, since the model of fair insurance provides a model for theorising about the just response to occupational disadvantage, and, in comparison with Violet, Una is not occupationally disadvantaged. For this reason, Una cannot appeal to the model to justify assistance from Violet. This reply reveals why those occupationally disadvantaged individuals, such as Violet, are not liable to take a further loss for the sake of those who suffer less occupational disadvantage, such as Una. In doing so, this clarification saves the model of fair insurance from the allegedly implausible consequences that the reverse transfers objection highlights.

5.9 The Consent Objection

The model of fair insurance provides compelling analysis of a range in cases, including *The Luck of the Draw*, *The Luck of the Occupational Draw*, and *Differential Occupational Luck*. However, this is insufficient to justify the model as the most attractive mechanism by which to determine about the just response to occupational disadvantage. This is for the familiar reason that neither the real world nor any attractive and feasible world resembles these cases. In the light of this fact, I have claimed that we may engage in

counter-factual speculation in order to determine the entitlements that an individual would have had, if she had access to a fair insurance market. This move has generated a separate objection to the model, which we can call the *consent objection*. This objection asserts that an individual's hypothetical insurance decisions fail to provide an appropriate basis upon which to justify the exercise of political power, since these decisions are merely hypothetical and do not involve actual consent.

I earlier introduced the consent constraint, according to which we must set the limits of the model of fair insurance to correspond to the limits of the moral force of hypothetical consent. This constraint explains why the model is not compelling in the case of a Survival Lottery. The consent objection rests upon a particular formulation of the consent constraint. More specifically, according to the consent objection, hypothetical consent lacks moral force in all the cases that we shall consider, and so the model of fair insurance fails to provide compelling analysis in any of these cases.

The consent objection expresses general scepticism about the moral force of hypothetical consent – or, more precisely, it expresses general scepticism about the moral force of hypothetical consent in the kinds of cases that we shall consider. This kind of scepticism is quite familiar. Indeed, as Dworkin himself points out in his famous critique of Rawls's Original Position, 'A hypothetical contract is not simply a pale form of an actual contract, it is no contract at all'.⁷⁰ The fact that I *would* be willing to pay £20 for your book does not mean that you can justifiably take £20 from me in return for the book without my actual consent. Perhaps we should say the same thing with respect to the model of fair insurance. On this view, the fact that I *would* have agreed to pay a premium in return for a specified indemnity fails to justify forcing me to pay that premium in return for the indemnity without my actual consent.

⁷⁰ Ronald Dworkin, 'The Original Position', *The University of Chicago Law Review*, 40 (1973), 500-33 at 501.

In terms of identifying the just response to occupational disadvantage, the consent objection denies that our justification for disadvantage-based job market regulation can depend upon individuals' hypothetical insurance decisions, since those are merely hypothetical and not actual. Defenders of this objection typically leave open the issue of how we should instead proceed.

The consent objection fails because it understates the moral force of hypothetical consent, at least under certain conditions. The real problem, then, is to determine when hypothetical consent has moral force. Dworkin is aware of this: when critiquing Rawls's Original Position, Dworkin's aim is not to challenge the moral force of hypothetical consent as such; rather, it is to show that, to the extent that Rawls's appeal to the Original Position has force, its force relies upon contingent features of the Original Position, such as the fact that it is constructed in such a way that posits every individuals' right to equal concern and respect.⁷¹

Though it is beyond the scope of this thesis to develop a full account of the conditions under which hypothetical consent has moral force, it is important to say a little more about this issue so as successfully to defeat the consent objection. The first thing to note is that there are a range of everyday examples in which we should be guided by hypothetical consent. For instance, many believe that the doctor of an unconscious or very senile patient should be guided by her patient's hypothetical consent.⁷² Similarly, some believe that a parent's actions should be guided at least in part by her child's hypothetical consent.⁷³ What is distinctive about these cases is that they are cases in which it is impossible for the individual concerned to give actual

⁷¹ Matthew Clayton, 'Rawls and Dworkin on Hypothetical Reasoning', (unpublished manuscript).

⁷² This claim is qualified by the remarks about 'prudence' that I make in section 5.5.

⁷³ Matthew Clayton, 'The Case Against the Comprehensive Enrolment of Children', *Journal of Political Philosophy*, 20 (2012), 353-64.

consent – or, more precisely – to give actual binding consent. This fact is interesting in so far as both Rawls's Original Position and the model of fair insurance share this property. This is because each of these devices treats consent as binding only if it is given under fair conditions. Accordingly, we consult individuals' hypothetical decisions in order to determine the consequences of the model of fair insurance only because it is impossible to consult individuals' action decisions under fair conditions. To be sure, I do not take these remarks to offer a water-tight defence of the moral force of hypothetical consent under the specified conditions. I would have to do a lot more to achieve this. Rather, my aim is to gesture in the direction of an account of the conditions under which hypothetical consent has moral force, so as to lend support to my rejection of the consent objection.

5.10 Conclusion

The aim of this chapter has been to develop and to defend the model of fair insurance as a mechanism for theorising about the just response to occupational disadvantage. This model states that any satisfactory defence of disadvantage-based job market regulation must meet two challenges. First, a defender must show that the policy satisfies both the basic rights constraint and the consent constraint. Second, she must show that the policy would be attractive to many individuals, perhaps including the average individual, were they to enjoy access to a fair insurance market.

More generally, the model of fair insurance forms a vital part of our account of justice in work. It supplies us with a mechanism by which to select between the various social institutions that arrange and distribute work in ways that are consistent with the principle of basic liberties. Thus, the model performs the role within an account of justice in work that Rawls assigns to both the principle of fair equality of opportunity

and the difference principle. If I am correct, the model of fair insurance is the most appealing mechanism that we have for determining the just response to occupational disadvantage. This enables it to serve its function better than the principle of fair equality of opportunity and the difference principle.

6 Regulating the Job Market

In the previous chapter I argued that we should appeal to the model of fair insurance in order to determine the just response to occupational disadvantage. My purpose in this chapter is to explore some of the consequences of this conclusion and, in doing so, both to clarify the versatility of the model of fair insurance and to make progress with filling in the details of our account of justice in work.

Needless to say, I cannot examine all forms of job market regulation that have been, or could be, advocated. Instead, I must be selective. In determining which policies to analyse, I have been guided by two considerations, each of which goes some way towards allaying the worry that my approach is ad hoc. First, I have chosen a range of proposals that span the political spectrum. In virtue of this, this chapter should be of interest to a wide audience rather than only to those who share a similar political outlook. Second, in order to make my task somewhat easier, I have tended to focus on initiatives around which there is an established or emerging philosophical literature with which to engage.

I begin by evaluating two contrasting proposals, in sections 6.1 and 6.2, respectively. The first is economically *laissez-faire*; the second involves a centrally planned incomes policy. For opposing reasons, neither of these approaches is justifiable. Insurers would not select *laissez-faire* policies because they provide insufficient protection against the risk of occupational disadvantage. By contrast, insurers would not select a centrally planned incomes policy for opposing reasons: its associated premium would be too high. Therefore, we must examine alternative possibilities.

In sections 6.3 and 6.4, I then consider two alternative interventions in the job market. The first sanctions the introduction of a minimum wage and earning subsidies, and the second offers individuals an unconditional basic income. Whilst both of these policies may be attractive to insurers, neither of these policies, nor the two combined, provides a complete solution to occupational disadvantage. We can thus be confident that, if insurers select these two policies, they will do so as part of a larger package of insurance policies. It is my task in the remainder of the chapter to consider the makeup of that package. I begin this task in section 6.5, where I analyse and defend the possibility that insurers may supplement a minimum wage, earning subsidies, and an unconditional basic income with a further policy that promotes job sharing. Various kinds of job sharing proposals have been advocated. I argue that, whilst more radical versions of this kind of intervention are unappealing, less radical alternatives may be attractive to insurers. In sections 6.6, I then show that working time directives may similarly feature in the package of policies appealing to insurers.

A distinctive feature of my approach is that I evaluate each intervention in the job market as part of an integrated package of policies, rather than in isolation from one another. This is because, when we theorise about the justifiability of each of these measures, we must do so in a way that is sensitive to how they interact with other policies that affect individuals' interests. This is not to deny that it can be helpful to consider the merits of a given policy in isolation from others. Indeed, this can be a good starting point, providing that we then consider it as part of a larger package of interventions. This, at least, is the strategy that I shall pursue in this chapter.

Plausibly, there is not a single package of policies that is most attractive to insurers. There may be multiple equilibria, with different bundles of policies being equally appealing. If this is the case, we should treat as justifiable a range of interventions in the job market, rather than only one set of measures. More generally,

though the model of fair insurance helps us to identify the social institutions that ought to arrange and to distribute work, it does not imply any single answer to this question. In the light of this, I should clarify that my aim in this chapter is therefore to defend the justifiability of one package of policies, and I leave open the possibility – in fact, I welcome the possibility – that different bundles of policies may be equally justifiable by appeal to the model of fair insurance.

Before moving on, it is important to make two further points about my ambitions in this chapter. First, in general, we can be more confident in our convictions about which outcomes would *not* result from the model of fair insurance than we can in our convictions about which outcomes would result.¹ This is because there is greater convergence amongst individuals on the topic of what makes arrangements and distributions of work disvaluable than there is on the topic of what makes arrangements and distributions of work valuable. Accordingly, whilst we can be confident that insurers would look to protect themselves from having to take on poorly paid, closely supervised, repetitive work at inconvenient times, we cannot be confident that they would look to take out insurance that provides them with opportunities for highly intellectually demanding work or for work that demands creativity, for example. To be sure, the point is not that the model fails to deliver determinate results; it does deliver determinate results. Rather, the point is that it is difficult to ascertain what these results are. This is important since, if the problem is merely epistemic, the model can still serve the function of structuring and informing public debate about these issues. This is one way in which the model of fair insurance is superior to the difference principle, which, as I argued in chapter 3, fails even to serve this function.

¹ Dworkin, *Sovereign Virtue*, 313.

My second point concerns the fact that my analysis of job market regulation is incomplete in three crucial ways. First, and most obviously, I am able to consider only a small range of interventions, and thus I must leave open the possibility that there are other policies that would also feature in the package of interventions that we can justify by appeal to the model of fair insurance.² Second, the model helps us to theorise about the just response to occupational disadvantage. It does not issue prescriptions relating to other properties or consequences of job markets that we have weighty reasons to ensure or to prevent. Here, I mean to draw attention to my earlier conclusion that we ought to arrange and distribute work ways that protect basic rights. Finally, each policy's appeal to an insurer will depend to some degree upon specific social, political, and economic background conditions that are likely to vary in different societies. Whereas in some cases the benefits and burdens associated with a given insurance policy may be such that it is appealing to insurers, in other cases the distribution of benefits and burdens associated with this measure may differ such that this is not the case. For this reason, it is difficult to make general yet precise recommendations about how best to regulate job markets. To be sure, this is not a problem that arises only in so-called non-ideal worlds: even in an ideal world, the benefits and burdens associated

² I discuss neither family leave initiatives (which grant caregivers paid time off with job protection, after childbirth or adoption) nor substitute care provisions (which provide parents with a variety of high-quality childcare options). For the former, see Harry Brighouse and Erik Olin Wright, 'Strong Gender Egalitarianism', *Politics & Society*, 36 (2008), 360-72; and Anca Gheaus and Ingrid Robeyns, 'Equality-Promoting Parental Leave', *Journal of Social Philosophy*, 42 (2011), 173-91. For discussion of the latter, see Nancy Folbre, 'Reforming Care', in Erik Olin Wright (ed.), *Real Utopias: Institutions for Gender Egalitarianism: Creating the Conditions for Egalitarian Dual Earner/Dual Caregiver Families* (Madison: University of Wisconsin Press, 2009). For a more general defence of each of these initiatives, see Gina Schouten, 'A Family Affair: Political Liberalism and the Gendered Division of Labor', (University of Wisconsin-Madison: PhD Thesis, 2013).

with any given proposal are likely to vary across different societies, depending upon the level and nature of natural resources to which it has access.³ This fact is not fatal to our project; rather, it simply highlights the need for a degree of tentativeness in supporting the general conclusion that we reach.

6.1 Laissez-Faire Policies

One option available to an insurer is to refrain from selecting any insurance policies that indemnify her against any level of occupational disadvantage. If she were to do this, the model of fair insurance would recommend providing no disadvantage-based job market regulation. On this view, the function of the state in this regard is to protect individuals against force, theft, and fraud, to enforce employment contracts, and to protect basic rights.⁴ We would thus be required to tolerate the considerable occupational disadvantage that is likely to arise from the fact that some individuals' talents happen to command a much greater premium on the job market than others' talents.

For reasons of simplicity, we can call this approach *laissez-faire*, though, for two reasons, this term is not perfectly apt. First, the approach is *laissez-faire* with respect to occupational disadvantage only. Even if an insurer were to select this option, it would not cast doubt on the prior conclusion that we must regulate the job market so as to serve other ends, such as protect basic rights. Second, the term might be thought to imply that there is something special, perhaps even natural, about an unfettered job

³ For the definition of this term that I share, see Zofia Stemplowska and Adam Swift, 'Rawls on Ideal and Nonideal Theory', in Jon Mandle and David Reidy (eds), *Blackwell Companion to Rawls* (Oxford: Blackwell, 2013). See also page 76, footnote 33.

⁴ I take the first part of this phrase (but not the second part) from Nozick, *Anarchy, State, and Utopia*, ix.

market. This is false. The maintenance of laissez-faire depends upon enforcement from the state. Indeed, Karl Polanyi goes further than this, famously pointing out that ‘free markets could never have come into being merely by allowing things to take their course...*laissez-faire* itself was enforced by the state’.⁵ The important point here is that laissez-faire simply refers to one set of laws rather than another, and these do not therefore necessarily occupy any default status.⁶

Broadly speaking, we can distinguish two kinds of argument that might offer support for the conclusion that insurers would find laissez-faire attractive. I shall call the first kind of argument the *consequences-based argument*, since it appeals to the negative consequences of job market regulation. I shall call the second kind of argument the *rights-based argument*, since it appeals to individuals’ rights in order to justify this result. My aim in this section is to show that neither argument is compelling and that, therefore, we lack reasons to favour laissez-faire.⁷

6.1.1 The Consequences-Based Argument

The consequences-based argument states that insurers would select laissez-faire on the grounds that it secures the best consequences under risky conditions. The reason that an insurer would refrain from selecting any insurance, so the argument goes, is that the

⁵ Karl Polanyi, *The Great Transformation* (Beacon Press: Boston, 1957), 139. Polanyi’s claim involves an additional (and, for me, unnecessary) historical claim about how laissez-faire might have come about.

⁶ Dworkin, *Justice for Hedgehogs*, 353-4.

⁷ The arguments that I offer in this section are not arguments against laissez-faire policies simpliciter, but instead against the claim that these policies would result from the model of fair insurance. Presumably, some defenders of laissez-faire reject this model, though I hope to have responded to their worries in the previous chapter, where I provided a more general defence of the model of fair insurance.

premium associated with any given insurance policy will be too high to justify the corresponding coverage that the policy would supply. If this were the case, it would be irrational to opt for any insurance package and, thus, we can be confident that insurers would select *laissez-faire*.

Some attempt to support this claim by appealing to the idea of government failure and, more specifically, to the fact that government interventions often generate both unintended and unforeseen costs.⁸ Initiatives designed to protect against the risk of occupational disadvantage may end up stifling the economy in ways that harm everyone, including their intended beneficiaries. Policies may have costly loopholes and they may have the predictable effect of discouraging the level and kind of investment necessary for productive efficiency and economic stability. Moreover, if public choice economists are right, these problems may be somewhat intractable and not simply the product of existent injustice. In Tomasi's words,

so long as a wide range of economic questions are allowed onto the legislative agenda, the importance of those questions will differ to parties in ways that do not track inequalities in wealth or power. It is not the fact of differential wealth but the fact of differential interests that generates these problems of "government failure".⁹

There are two responses to the consequences-based argument. According to the first, we should reject the empirical foundations upon which the argument is built. No doubt, government intervention often brings about unintended and unforeseen

⁸ Tomasi, *Free Market Fairness*, ch. 7, esp. 198-200.

⁹ Tomasi, *Free Market Fairness*, 199-200. Tomasi is influenced by Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA.: Harvard University Press, 1965). For a summary of the contribution of public choice economics, see Gordon Tullock, Arthur Seldon, and Gordon L. Brady, *Government Failure: A Prime in Public Choice* (Washington, D.C.: Cato Institute, 2002).

costs and, no doubt, these costs can be considerable. However, not all interventions generate costs, and even fewer generate considerable costs that threaten to undermine the justifiability of the regulation. The lesson that we learn from public choice economics is not that we should turn our back on government regulation, but that we should evaluate its justifiability in a way that is highly sensitive to the possibility of unintended and unforeseen costs.

Second, even if we were to accept this implausibly pessimistic outlook with respect to government interference, it seems very hard to believe that the costs associated with all regulation will be sufficiently high to make it unattractive to an insurer who is ignorant of her occupational endowments. Even if the premiums associated with some packages are quite considerable – perhaps they involve living in a less prosperous society, for example – it may remain rational to accept this if it is necessary to reduce the severity or the likelihood of occupational disadvantage. An individual's independent interest in living in a productively efficient economy is only one amongst many, and the burden of living in a less prosperous society may be a price worth paying in order to serve other interests. In this respect, the consequences-based argument fails to take seriously the extent to which insurers will be motivated to protect themselves against the risk of severe occupational disadvantage.

6.1.2 The Rights-Based Argument

The rights-based argument offers a second way in which to defend *laissez-faire*. According to this argument, we ought to pursue *laissez-faire* not because of its desirable consequences, but because it is the only option available to insurers. There are two ways in which to defend this argument. These correspond to the two constraints on insurance decisions that I identified in the previous chapter: the basic

rights constraint and the consent constraint. According to the first possibility, insurers would select laissez-faire, since these are the only policies that do not violate a right that is granted protection by the basic rights constraint. According to the second possibility, insurers would select laissez-faire, since these are the only policies that do not violate a right that is granted protection by the consent constraint. I shall reject both possibilities, beginning with the basic rights constraint.

A proponent of the first argument is Tomasi, who notes that ‘for many people the ownership of productive property plays a profound role in the formation and maintenance of self-authored lives’. In support of this conviction, he invites us to consider ‘the way a farmer identifies himself with his field, or the owner of a small business with her shop and its customers and employees’.¹⁰ It matters significantly to both the farmer and the small business owner that each is the owner of her productive property and this, in turn, gives us a weighty reason to refrain from restricting the range of control rights over the property that they each enjoy. In this respect, the right to productive property is akin to the right to personal property, which is typically treated as a basic right.¹¹ The upshot of this, so the argument goes, is that insurers must select laissez-faire, since these are the only policies that do not violate the basic right to productive property, which is granted protection by the basic rights constraint. All other policies are off the table, so to speak.

There are at least three objections to this argument.¹² First, even if the premises of the argument were sound, it would fall short of providing a compelling defence of laissez-faire, since plainly there are forms of job market regulation that do not violate

¹⁰ Tomasi, *Free Market Fairness*, 78.

¹¹ Rawls, *Justice as Fairness*, 114-15.

¹² For further objections to Tomasi’s specific view, see Matthew Clayton and David Stevens, ‘Are Economic Liberties Justifiable to Everyone?’, (unpublished manuscript).

the putative basic right to productive property, and so cannot be ruled out on these grounds. This is certainly the case with respect to an unconditional basic income, and it may also be the case with respect to policies designed to promote worker ownership, depending upon the details of these policies, for example, if they are supported via state subsidies.¹³ This is significant for it implies that these policies, as well as others, would remain available to insurers, even if we were to accept the premises of this argument.

Second, Tomasi's analysis is misleading because it focuses predominantly on only one part of the economy. Even if we were to accept Tomasi's remarks about the farmer and the small business owner, this does not entail that the owners of much larger corporations should enjoy the same rights to productive property.¹⁴ As a rule, the identity of someone who has shares in a large-scale corporation is not nearly so closely bound up with that organisation. For this reason, it is not clear that we need afford that corporation that same kind of protection against regulation. If job market regulation that interferes with productive property were targeted exclusively at only certain economic enterprises (say, those with a particular ownership structure or who employ at least a minimum number of staff), it may not violate basic rights, and so could appear on the menu available to insurers.

Third, Tomasi's justification of basic rights differs from, and is less plausible than, the Rawlsian account that I defended in chapter 3. Whereas I am concerned with the two moral powers, where these are realised to some threshold level, Tomasi is concerned with the capacities for responsible self-authorship, where this ideal is

¹³ This property of unconditional basic income is emphasised in Van Parijs, *Real Freedom for All*.

¹⁴ Martin O'Neill and Thad Williamson, 'Free Market Fairness: Is There a Moral Case for Free Markets?', *Boston Review*, November 2012, available at: <http://www.bostonreview.net/books-ideas/free-market-fairness>.

continuous and realised to the extent that a person's decisions are her own.¹⁵ In the words of Jeppe von Platz,

where Rawls claims that the moral powers are sufficiently realized when a person is able to offer and abide by fair terms of social cooperation and to devise and pursue a determinate conception of the good, for Tomasi the moral powers are realized *to the extent that* a person achieves responsible self-authorship.¹⁶

This disagreement tracks a deeper disagreement. My aim is to develop an account of justice in work that is suitable for free and equal participants in a fair scheme of social cooperation. By contrast, Tomasi's aim is to develop an account of the demands of justice that best guarantees opportunities for responsible self-authorship for all. I expressed sympathy for the former's approach in an earlier chapter, and I shall not rehearse my reasons for this here. If this is correct, the challenge is not to show that interference with the use of productive property damages self-authorship. Rather, it is to show that it jeopardises individuals' status as free and equal participants in a fair scheme of social cooperation. Without further argument, it is not clear that we should accept this.¹⁷

Let me now turn to the second defence of the rights-based argument, which states that individuals would select laissez-faire on the grounds it is the only option that does not violate a right that is granted protection by the consent constraint. This is a politically popular argument: many people believe that merely hypothetical consent

¹⁵ See Rawls, *A Theory of Justice*, §77; and Tomasi, *Free Market Fairness*, 194.

¹⁶ Von Platz, 'Are Economic Liberties Basic Rights', 34-5 [emphasis in original].

¹⁷ Von Platz considers but quickly dismisses a Tomasi-inspired argument of this kind that is designed to show that interference with employment contracts jeopardises individuals' status as free and equal participants in a fair scheme of social cooperation. See his 'Are Economic Liberties Basic Rights', 36-40.

provides insufficient grounds by which to restrict an individuals' freedom to contract. Very broadly, the right to freedom to contract is said to grant an individual protection against government regulation that restricts her freedom to determine the contents of, or her freedom to commit to, enforceable contracts with others.¹⁸ Proponents of this view ask, if an employee on an assembly line is willing to sell her labour in return for a given wage, who is the state to do anything other than to uphold this contract?¹⁹

The argument may draw some force from the analogy of the Survival Lottery. According to the present argument, just as merely hypothetical consent is insufficient to justify taking an individual's organs if her name were pulled out of a hat, so too it is insufficient to justify restrictions on an individual's freedom to contract. Underlying this analogy is, I think, an appeal to the *right of self-ownership*. The right of self-ownership, as I shall understand, is a right to 'the logically strongest set of ownership rights that one can have over one's person that is compatible with someone else having the same kind of ownership rights over everything else in the world'.²⁰ Defenders of this right typically believe that it is not the kind of right that can be waived by merely hypothetical consent.²¹ This is important for, if correct, it implies that the model of fair insurance cannot justify interventions that violate the right of self-ownership, and this might be thought to provide some evidence in support of laissez-faire.

¹⁸ This definition needs to be refined. For one, an individual's right to freedom of contract does not protect the opportunity to commit to enforceable contracts that wrong agents not party to the contract.

¹⁹ Samuel Brittan, *Capitalism With a Human Face* (Aldershot: Edward Elgar, 1995), 244. This view is also taken seriously, though not endorsed, in Spencer, 'Promoting High Quality Work'.

²⁰ Peter Vallentyne, Hillel Steiner, and Michael Otsuka, 'Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried', *Philosophy & Public Affairs*, 33 (2005), 201-15 at 205.

²¹ Nozick, *Anarchy, State, and Utopia*; and Vallentyne, Steiner, and Otsuka, 'Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant', 206.

There are several reasons to reject this defence. Most fundamentally, we should reject the claim that individuals possess a right of self-ownership. This is for reasons made familiar by critics such as John Christman, G. A. Cohen, and Kasper Lippert-Rasmussen, namely that, on reflection, it has highly counter-intuitive implications.²² For example, it implausibly implies that there is no enforceable duty to provide life-saving assistance even when the costs of doing so are very small. I take this as sufficient evidence against the right of self-ownership. Though I acknowledge that others disagree, I am reluctant to engage in detailed analysis of this implication of the alleged right, since this is not a chapter about self-ownership.

A further counter-intuitive implication of the right of self-Ownership is revealed by the following example, devised by Lippert-Rasmussen:

Half the population is born with two pairs of eyes and the other half with no eyes. In sighted individuals, one pair of eyes is located normally and fulfils the usual function. The other pair is located inside the human body, say, in the shoulder. Although this latter pair would enable those who have them to see if they were surgically moved to the eye sockets, they play no role where they are. Indeed they cannot perform any visual or other bodily function without being moved. Suppose further that the body of a person born with two pairs of eyes will expel the spare pair when that person reaches twenty years of age. The pair can then easily be reabsorbed into the shoulder of its owner, or the owner can transfer his spare eyes to a blind person.²³

²² G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995); and Kasper Lippert-Rasmussen, 'Against Self-Ownership: There Are No Fact-Insensitive Ownership Rights over One's Body', *Philosophy & Public Affairs*, 36 (2008a), 86-118. See also Daniel Attas, 'Freedom and Self-Ownership', *Social Theory and Practice*, 26 (2000), 1-23; Richard Arneson, 'Lockean Self-Ownership: Towards a Demolition', *Political Studies*, 39 (1991), 36-54; and John Christman, 'Self-Ownership and Property Rights', *Political Theory*, 19 (1991), 28-46.

²³ Lippert-Rasmussen, 'Against Self-Ownership' at 98 [emphasis removed].

Unlike with the Survival Lottery, it seems clear that we can justify coercive eye distribution by appeal to the model of fair insurance. That is, if we knew that a given individual would have bought into an Eye Redistribution Lottery, we would be justified in taking her spare pair of eyes. The reason for treating these cases differently is that the interests at stake in the Survival Lottery are much more important than the interests at stake in the Eye Redistribution Lottery. This conclusion is significant, since, if the interest in freedom of contract were shown not to be sufficiently weighty, this would suggest that we should treat cases of job market regulation as akin to the Eye Redistribution Lottery rather than the Survival Lottery. This is in fact typically the case, and it is supported by my earlier arguments in response to Tomasi.

Aside from this, there is a further worry about the present defence of the rights-based argument. This worry mirrors one feature of right-libertarianism to which Otsuka draws our attention:

Perhaps, even if we possess a libertarian right of ownership over ourselves, we can only ever come to have a less full right of ownership over land. Perhaps we can come to own any bit of land only on the condition that we share some of whatever we reap from it with others. If this were true, then the state's forcing each of us to share our harvest with others would be no more an infringement of a libertarian right of self-ownership than in the case in which one purchased a plot of land from someone else on the condition that one share a part of one's harvest with the needy.²⁴

In short, it is consistent with the right of self-ownership that an individual incurs highly demanding duties the moment that she claims ownership over a resource that is not part of her person. In this respect, the implications of the right of self-ownership

²⁴ Michael Otsuka, 'Self-Ownership and Equality: A Lockean Reconciliation', *Philosophy & Public Affairs*, 27 (1998), 65-92 at 76-7.

may be highly restrictive. Of course, we are not here concerned with ownerships rights over land. But, the present point may also apply to ownership rights over productive property. Even if an individual possess a right of self-ownership, perhaps she can only ever come to have a less than full ownership rights over productive property. Maybe she can own productive property only on the condition that she uses it in certain ways, such as in ways suggested by the model of fair insurance. If correct, then interference with freedom of contract would not necessarily violate the right of self-ownership, providing that the contracts refer to the use of property, which many typically do.²⁵ This result further vindicates the usefulness of the model of fair insurance.

Of course, the present objection to the rights-based argument does not imply that there is no interest in freedom of contract. Clearly, there is such an interest. The interest in freedom of contract is ambition-based: it is an interest an individual has in virtue of her ambition to contract freely.²⁶ Though this interest will feature in an insurer's deliberations about which policies to select, it does not generate a right that cannot be waived by appeal to merely hypothetical consent. A virtue of the model of fair insurance is that it seeks to determine the weight of this interest by consulting individuals' own ambitions, rather than implausibly accord it lexical priority over other interests, like other approaches do.

²⁵ See also Michael Otsuka, 'Freedom of Occupational Choice', *Ratio*, 21 (2008), 440-53 at 450.

²⁶ Scanlon is sympathetic to this view, though he is clear about the fact that the interest in freedom of contract may also reflect other interests also. See his 'The Significance of Choice'. For a defence of the claim that the interest in freedom of contract reflects the interest in being able to form special relationships with others, see David Owens, *Shaping the Normative Landscape* (Oxford: Oxford University Press, 2012), part II. Finally, for a defence of the claim that the interest in freedom of contract reflects a multitude of interests rather than a single one, see Victor Tadros, 'The Foundations of Consent', (unpublished manuscript).

To conclude, let me summarise the main findings of this section. My aim has been to explore and, ultimately, to reject the assertion that the model of fair insurance would provide us with no reason to regulate the job market in a way designed to mitigate or to eliminate occupational disadvantage. I have considered two arguments that might support this claim: the consequences-based argument and the rights-based argument. I rejected the first on the grounds that it both overstates the costs of government failure and understates the extent to which insurers will be motivated to protect themselves against lacking opportunities for arrangements of work that they see as desirable. I then rejected two defences of the second argument. In particular, I argued that we cannot appeal to either the basic rights constraint or the consent constraint in order to justify *laissez-faire*. For these reasons, we can now turn to other possible outcomes of the model of fair insurance.

6.2 Centrally Planned Incomes Policies

In direct contrast with *laissez-faire* is the possibility of having a centrally planned incomes policy. This policy operates by adjusting individuals' income in the light of various non-pecuniary aspects of her job, so as to eliminate occupational disadvantage. Whereas this policy affords financial compensation to an individual whose job scores poorly according to given non-pecuniary standards, it financially penalises an individual whose job scores well in these terms. We can easily apply the proposal to cases involving unemployment.

One version of this policy is defended by James Dick, who claims that 'the guiding principle should be that workers at all jobs be so recompensed that when the nature of their work and the amount of their pay are considered together, all are

treated equally in the workplace'.²⁷ It is unclear why proponents of this policy, such as Dick, believe that we should focus on ensuring that workers are equally recompensed rather than on ensuring that workers enjoy equally valuable occupational opportunities. These two goals may differ, such as in the case in which two individuals perform identical jobs but one has a much more valuable set of occupational opportunities from which to select. One reason for ignoring these complications is that it is almost always impossible accurately to determine an individual's occupational opportunities. Perhaps therefore we ought not to design our social institutions in ways that rely upon this information. Instead, we may rely upon an individual's actual job as a proxy for her occupational opportunities. I shall put aside these complications in the remainder of this section, and instead focus on more fundamental properties of a centrally planned incomes policy.

To begin, let me note how a centrally planned incomes policy may be initially appealing to insurers because it promises to provide considerable, indeed complete, protection against occupational disadvantage. By purchasing this policy, an individual could guarantee for herself that, whatever the marketability of her talents, she would not suffer any occupational disadvantage, once she takes into account both the pecuniary and non-pecuniary benefits and burdens of her job. At first blush, this policy may seem rational to an insurer aiming to maximise her worst occupational prospects, given her ignorance about the marketability of her talents.²⁸

²⁷ James Dick, 'How to Justify a Distribution of Earnings', *Philosophy & Public Affairs*, 4 (1976), 248-72 at 272. See also Cohen, *Rescuing Justice and Equality*, 55-8; Joel Feinberg, *Doing and Deserving* (Princeton: Princeton University Press, 1970), 88-94; and Michael Lessnoff, 'Capitalism, Socialism and Justice', in Williams Shaw and John Arthur (eds), *Justice and Economic Distribution* (Englewood Cliffs, N.J.: Prentice-Hall, 1978), 143.

²⁸ Dworkin, *Sovereign Virtue*, 334.

When theorising about which version of a centrally planned incomes policy is likely to be most attractive to insurers, we must do so in a way that is sensitive to three kinds of risks that insurance firms face. These risks affect the premium that insurance firms must charge in order to break-even. First, there are cases of fraud, whereby the claimant intends to mislead the insurance firms in order to secure a pay-out.²⁹ Second, there are cases of moral hazard, whereby an individual increases her exposure to risk in response to the fact that the insurer must bear a portion of the burden of those risks.³⁰ Third, there are cases where, because of epistemic uncertainty, the claimant makes a good faith claim for compensation to which she is not entitled, according to the detail of the insurance policy.³¹

I shall focus on the third risk. These risks are higher for some policies than for others. For example, the third risk is higher for centrally planned incomes policies that calculate financial compensation on the basis of information that is not publicly verifiable, such as information about preference-satisfaction. This is because it is more difficult for an insurance firm to show that an individual is not entitled to compensation, according to the terms of the agreement. A possible consequence of this is that insurance firms might shift the burden of proof onto claimants, requiring them to prove that they are entitled to compensation. A problem with this is that the resulting policy would prove unpopular with insurers, aware of the fact that this may be too demanding a standard if the policy refers to information that is not publicly verifiable. An alternative is for insurance firms to charge a much higher premium for such policies, in order to cover the additional costs they are likely to incur. The resulting policy would be expensive, and thus similarly likely to be unpopular with

²⁹ Ibid., 335.

³⁰ Will Braynen, 'Moral Dimensions of Moral Hazards', *Utilitas*, 26 (2014), 34-50.

³¹ Dworkin, *Sovereign Virtue*, 100.

insurers. This gives us good reasons to suppose that the most appealing incomes policies will be ones that make use of more publicly verifiable information, and so are less vulnerable to the third risk that I have described.³² (This is not the only reason to prefer policies that make use of publicly verifiable information over policies that don't make use of it. I outline an additional reason in the next chapter.)

In this vein, perhaps insurance firms could evaluate jobs on the basis of generalised data, collected by psychologists, say, about the reported desirability of various categories of jobs. On this view, a cleaner would be entitled to greater financial compensation than a philosopher if it were generally true that philosophers revealed higher levels of satisfaction with their work (excluding pecuniary benefits) than cleaners.³³ Though this approach has some merit, it fails to accommodate the worry that philosophers would retain an incentive to under-report their satisfaction with their work to psychologists, since doing so would then entitle them to further financial compensation.

There are two more fundamental problems with a centrally planned incomes policy that mean that we can be confident that it would not have widespread appeal to insurers. First, though the costs of setting up and maintaining a policy of this kind will vary in accordance with how detailed its calculations are, for all policies these costs are likely to be very large. The task of accurately categorising every job in order to determine whether and by how much to adjust its associated income would be an enormous one, involving possibly astronomical administration costs. If the scheme is to remain self-financing, these costs must be reflected in the premium that insurance

³² Dworkin, 'Sovereign Virtue Revisited', 129, n. 38.

³³ Further fairness-based objections are discussed in Joseph Carens, 'Compensatory Justice and Social Institutions', *Economics and Philosophy*, 1 (1985), 39-67 at 43-4. These objections lack force when we justify a centrally planned incomes policy by appeal to the model of fair insurance.

firms charge for this policy. Quite clearly, given the scale of the associated administration costs, the premium is likely to be set at a level that is unappealingly high, even for versions of this policy that make ample use of generalisations.

This conclusion should not be surprising. It reflects the more general fact that the decision to take out insurance is always a financially disadvantageous bet, in the sense that the cost of the bet is greater than the return if the covered risk eventuates, discounted by its improbability. The reason for this is that the income of an insurance firm must equal not only the expected indemnity to be returned to insurers but also the firm's administration costs.³⁴ Put simply, if an insurance firm were to offer either financially advantageous or financially neutral bets, it would soon go bankrupt, since the indemnities it pays and its administration costs are likely to be greater than the income it receives in premium payments.

A second fundamental problem with a centrally planned incomes policy is that it risks severely eroding productive efficiency, by removing the incentives to pursue socially valuable work. As Joseph Carens notes, 'Efficiency requires that scarce talents and skills be attracted to their most productive uses, but if a lavatory attendant earns more than an engineer, perhaps some who could be engineers will choose to be lavatory attendants'.³⁵ The problem, here, takes the form of a collective action problem: each worker prefers that others work at more productive jobs so that the productive efficiency of the economy increases, but each never the less has a compelling reason to work at the job she finds most pleasant, even if it involves a less productively efficient use of her talents.³⁶

³⁴ Dworkin, *Sovereign Virtue*, 95.

³⁵ Carens, 'Compensatory Justice and Social Institutions'.

³⁶ Dworkin, '*Sovereign Virtue* Revisited', 127.

Though the damage to productive efficiency that an incomes policy brings about is a cost that is distinct from the policy's premium that an insurer must pay to the insurance firm, it is none the less a cost that should feature prominently in insurers' deliberations. After all, a possible consequence of this policy is that everyone is made worse off than they would otherwise be as a result of the productive inefficiency the policy brings about. Proponents of these policies may reply by asserting that it may be possible to use other mechanisms to ensure that an individual uses her talents productively. Perhaps we may conscript her; perhaps it is possible to inculcate in her a desire to contribute to society – that is, perhaps we may use moral incentives.³⁷ I believe that these moves have only limited force. However, I shall not defend this conviction here, since this is the subject of the next chapter.

To summarise, we have clear evidence that a centrally planned incomes policy would be an unappealing insurance option to many insurers. Whereas laissez-faire is unattractive because it fails to provide sufficient protection against the risk of occupational disadvantage, a centrally planned incomes policy fails for the opposite reason: it provides too much protection, in the sense that it provides protection at too great a cost to insurers.

6.3 Minimum Wage and Earning Subsidies

In response to the deficiencies of the previous suggestions, an insurer may be tempted to purchase coverage that enhances the income of low earning employees. This could take the form of a minimum wage – a policy that prohibits employment contracts that pay less than a stipulated amount per hour, say – or an earning subsidy – a policy that

³⁷ Joseph Carens, *Equality, Moral Incentives and the Market* (Chicago: University of Chicago Press, 1991).

provides a government-funded subsidy to low earning employees – or both.³⁸ I shall not discuss the differences between these two policies.³⁹ What is important is that both are designed to mitigate the occupational disadvantage suffered by low earning employees by enhancing their income. Although there are multiple ways in which to fund these policies, I shall consider funding them via progressive taxation, since this is the possibility most commonly defended and enacted.⁴⁰ The revenue collected from progressive taxation may either be paid to employers of low earning employees, on the assumption that they will then pass this on to their employees, or be paid directly to low earning employees through the tax system, in the form of a tax credit. This taxation serves as part of the premium that an insurer is required to accept if she purchases a policy of this kind.

It is worth emphasising an important feature of the current proposal. The level of protection that the policy offers depends upon where we set the minimum wage and the level of earning subsidy that we provide. We should perform these calculations in a way that is sensitive to the level of progressive taxation that we would need to finance them. For example, if we set the minimum wage at a very low level, the corresponding level of taxation would also be low, but the policy would offer inadequate protection against occupational disadvantage. By contrast, if we set the minimum wage at a very high level, the policy would offer considerable protection against occupational

³⁸ In the United Kingdom, there is both a minimum wage (set at £6.50 for over 21 year olds) and a Working Tax Credit. Similarly in the United States, there is a federal minimum wage (set at \$7.50 for over 20 year olds) and an Earned Income Tax Credit.

³⁹ For more on the differences between these two proposals, see Douglas Bamford, 'Egalitarian Taxation: Equality of Resources, Market Luck, and Leisure', (University of Warwick: PhD Thesis, 2013), 249-63.

⁴⁰ This is the view defended in Dworkin, *Sovereign Virtue*, 99-109.

disadvantage, but the corresponding level of taxation necessary to finance the scheme would be unappealingly high. The task, then, is to set the minimum wage at a level that solves this simultaneous equation: it must offer considerable protection against occupational disadvantage but not be so expensive to fund that insurers would not find it an attractive option.

I believe that it is clear that an insurance policy of this kind would have widespread appeal to insurers. By proceeding in this fashion, therefore, it is possible to appeal to the model of fair insurance in order to justify a minimum wage and earning subsidies. Moreover, the model provides us with a structure for determining the level at which we should set the minimum wage and earning subsidies. Like Dworkin, my sense is that the level of minimum wage and earning subsidies that we can justify on these grounds will be much higher than it currently is in many western democracies, such as the United Kingdom and the United States.⁴¹

Having said this, these policies are not silver bullets; they do not meet all the worries that an insurer is likely to have. This is for at least three reasons. First, minimum wage and earning subsidies offer protection against occupational disadvantage only to those in paid employment. They do not mitigate the occupational disadvantage suffered by either the unemployed or those in unpaid employment. In fact, under some conditions, these policies may even worsen the problem of unemployment by making otherwise viable firms unprofitable.⁴² I shall call this the *unemployment problem*.

⁴¹ Ibid., 97.

⁴² This is the view of Gary Becker and Guity Becker, who say: 'It's simple: hike the minimum wage, and you put people out of work'. See their *The Economics of Life* (London: McGraw-Hill, 1997), 37. This view is not supported by empirical evidence. See David Card and Alan Krueger, 'Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania', *American*

Second, these policies do not address concerns relating to the quality of work – that is, to the internal benefits and burdens of work. No doubt, if an employee were paid generously, we would be much less concerned about the fact that she has no option but to take on work that she considers to be highly disvaluable. The injustice suffered by many employees on assembly-lines in current society would be massively allayed were they paid much more generously. But, in at least some cases, better pay is not all that matters. Individuals also often care about the quality of the work itself. For example, in addition to it being important that she is well paid, it may also be important to an employee that she is able to achieve self-realisation through her work.⁴³ At the extreme end of this is the possibility that there are some jobs, such as prostitution, for example, that some individuals would not be willing to take on, irrespective of the pay (and irrespective of other objections we may have to it). I shall call this the *narrowness problem*.

Moreover, even in cases where this is not true – that is, even in the case where we can meet an employee's concerns by improved pay alone – it may be better to meet these worries through other means. It may be better, say more efficient, to mitigate the

Economic Review, 84 (1994), 772-93; and Helen Bewley et al., 'The Impact of the National Minimum Wage on Productivity, Business Performance and Employment', *National Institute of Economic and Social Research*, (2015), available at: <http://www.niesr.ac.uk/sites/default/files/2015%20March%2021%20National%20Minimum%20Wage%20LPC.pdf>. This is not to deny that increasing the minimum wage never predictably increase unemployment. As T. M. Wilkinson points out, the rate at which the minimum wage is set will presumably affect how much unemployment, if any, it causes. See his 'The Ethics and Economics of the Minimum Wage', *Economics and Philosophy*, 20 (2004), 351-74 at 356.

⁴³ Gheaus and Herzog, 'The Good (and Bads) of Work'; and White, *The Civic Minimum*, 89-90. There is evidence to suggest that a minimum wage is unattractive from this perspective, since employers may respond to it by making jobs more onerous. See Richard Epstein, *Simple Rules for a Complex World* (Cambridge, MA.: Harvard University Press, 1995), 144-5.

occupational disadvantage suffered by an employee on an assembly-line by giving her more time off than by paying her the very large wage that would be necessary to compensate her for the burdens she bears. By focusing exclusively on measures designed to enhance the income of low earning employees, we risk blinding ourselves from the possibility that it may be better to mitigate occupational disadvantage through the use of other means. I shall call this the *efficiency problem*.

The unemployment problem, the narrowness problem, and the efficiency problem all suggest that there are considerable limits to selecting only a policy that protects a minimum wage and earning subsidies. The point here is not that these policies would not be selected by insurers; they would. Rather, in addition to choosing these policies, insurers may look to purchase further policies that go beyond these and rectify the problems that I have discussed. In other words, insurers would look to purchase a package of policies, where minimum wage legislation and earning subsidies compromise only part of that package. In the remainder of the chapter, I consider at least part of the makeup of the rest of this package.

6.4 Unconditional Basic Income

One of the ways in which minimum wage and earning subsidies are inadequate is that they fail to offer protection against the occupational disadvantage suffered by those not in paid employment. This is the unemployment problem. When theorising about this problem, we should put aside our worries about prejudice and stigmatisation. This is because, as I earlier pointed out, these issues are not properly dealt with through the model of fair insurance.

With the threat of unemployment in mind, insurers may consider selecting policies designed to increase their opportunities for paid employment. There are a

range of policies that may serve this purpose, including job guarantees, state investment in labour-intensive industries, or the use of hiring subsidies that incentivise firms to increase their employment of low earning employees.⁴⁴ However, policies of this kind are typically advocated only on a short-term basis, and not as a means to shifting permanently the long-run rate of unemployment.⁴⁵ This is because their long-term use is predicted to generate considerable negative side-effects, including, for example, continuously accelerating rates of inflation.⁴⁶ These costs would be reflected in the insurance policy's premium. If this economic analysis is correct, these costs could be considerable, certainly high enough to put off many insurers.

For this reason, I shall interrogate alternative responses to the risk of occupational disadvantage suffered by those not in paid employment. In this section, I consider the merits of granting each individual an unconditional basic income, funded

⁴⁴ Anne Alstott, 'Work vs. Freedom: A Liberal Challenge to Employment Subsidies', *The Yale Law Journal*, 108 (1999), 967-1058 at 1029-38.

⁴⁵ An exception to this is the Soviet Union. Article 40 of the 1936 constitution states: 'Citizens of the USSR have the right to work, that is, to guaranteed employment with remuneration in accordance with the quantity and quality of the work,...including the right to choose a profession, occupation, and work in accordance with their own vocation, ability, vocational training, and education, taking into account the needs of society'.

⁴⁶ Very roughly, classical economic theory suggests that, as unemployment falls, wages then rise, and this in turn leads firms to increase their prices in order to maintain profitable. This idea is explored in Milton Friedman, 'The Role of Monetary Policy', *American Economic Review*, 68 (1968), 1-17. See also, Douglas Staiger, James H. Stock, and Mark W. Watson, 'The NAIRU, Unemployment and Monetary Policy', *The Journal of Economic Perspectives*, 11 (1997), 33-49. In a similar vein, Carens adds: 'No existing market economy has managed to eliminate significant cyclical fluctuations in employment, and there is no good reason for believing that even a market socialist economy could solve this problem'. See Carens, 'Compensatory Justice and Social Institutions', 58.

via progressive taxation.⁴⁷ According to Philippe Van Parijs, an unconditional basic income is ‘a grant paid to every citizen, irrespective of his or her occupational situation and marital status, and irrespective of his or her work performance or availability for work’. In other words, it is ‘an individual guaranteed minimum income without either a means test or a (willingness to) work condition’.⁴⁸

The appeal of an unconditional basic income is that it enables an individual to pursue her projects to some degree, even if she is unable or unwilling to find paid employment. The extent to which she is able to pursue these projects will depend upon the level at which we set the unconditional basic income. The more generous the income, the more likely it is that she will be able to pursue her projects to a greater extent. When theorising about which level of unconditional basic income would be most appealing to the average insurer, it is important again to be sensitive to the costs of the proposal. Just as with minimum wage legislation, the task is to set the unconditional basic income at a level that solves a simultaneous equation: it must offer considerable protection against the occupational disadvantage suffered by those not in paid employment but not be so expensive to fund that it is unattractive to insurers.

An unconditional basic income has been criticised on many grounds. Perhaps the most well-known of these is the *exploitation objection*. In a nutshell, this objection

⁴⁷ There may be other reasons to protect an unconditional basic income, and these reasons may count in favour of funding it in another way, such as through a national or global resource dividend. Such a policy may operate in addition to the policy that I discuss here. See Thomas Pogge, ‘Eradicating Systemic Poverty: Brief for a Global Resource Dividend’, *Journal of Human Development*, 2 (2001), 59-77; and Hillel Steiner, ‘Just Taxation and International Redistribution’, *NOMOS*, 39 (1999), 171-91. For a reply, see Paula Casal, ‘Global Taxes on Natural Resources’, *Journal of Moral Philosophy*, 8 (2011), 307-27.

⁴⁸ Philippe Van Parijs, ‘Why Surfers Should be Fed: The Liberal Case for an Unconditional Basic Income’, *Philosophy & Public Affairs*, 20 (1991), 101-31 at 102.

states that we ought to resist granting individuals an unconditional basic income, since, if we were to do so, we would allow non-working individuals to free-ride on the efforts of, and so exploit, working individuals. According to the exploitation objection, this is unjust.⁴⁹ A merit of the present justification of an unconditional basic income is that it is invulnerable to this objection. This is because a non-worker can reply by pointing out that she is not free-riding on others' efforts, but instead that she is enjoying the resources to which she is entitled as a result of her own insurance decision.⁵⁰

A more forceful objection to an unconditional basic income is that, in order to be affordable to insurers, it would have to be set at a very low level. This objection trades upon the fact that this policy could be very expensive to fund. Commenting on how costly this policy may be, White claims that, once we account for the other services to which we shall want to dedicate our resources, 'it becomes less likely (other things being equal) that the level of basic income will be sufficient to cover a standard set of basic needs'.⁵¹ This objection, which we can call the *insufficiency objection*, does not attempt to show that an unconditional basic income would not be selected by insurers. Rather, the point is that, even if it were selected, the income would have to be set at a level that offers only very little protection against the occupational disadvantage suffered by those not in paid employment.

⁴⁹ For a version of this objection, see Stuart White, 'Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income', *Political Studies*, 45 (1997), 312-26. For replies, see Philippe Van Parijs, 'Reciprocity and the Justification of an Unconditional Basic Income. Reply to Stuart White', *Political Studies*, 45 (1997), 327-30; and Karl Widerquist, 'Who Exploits Who?', *Political Studies*, 54 (2006), 444-64. For a reply to these objection, see Stuart White, 'Reconsidering the Exploitation Objection to Basic Income', *Basic Income Studies*, 1 (2006), 1-17.

⁵⁰ A similar point is made, albeit within a slightly different context, in Andrew Mason, *Living Together as Equals: The Demands of Citizenship* (Oxford: Oxford University Press, 2012), 93.

⁵¹ White, 'Reconsidering the Exploitation Objection to Basic Income', 9.

In reply, we can illuminate further advantages of the proposal that count in favour of setting the unconditional basic income at a higher level. If an unconditional basic income provides protection against other risks, this counts in favour of selecting a higher level, since, in return for a higher premium – that is, a higher rate of progressive taxation – insurers protect themselves not only against the disadvantage suffered by not being in paid employment, but also against the additional risks. In the remainder of this section, I highlight a further advantage of an unconditional basic income and, in doing so, I respond to the insufficiency objection.

The chief advantage of an unconditional basic income that I have in mind is that it enhances the bargaining power of an employee vis-à-vis her employer.⁵² An unconditional basic income increases the value of an employee's exit option and, accordingly, her employer must offer her a more attractive employment contract than otherwise to keep her as an employee. Whereas, when there is no unconditional basic income, contract negotiations take place against the assumption that the employee's subsistence depends on successful negotiation, this is not the case when there is an unconditional basic income. In this sense, an unconditional basic income operates as 'a kind of unconditional and inexhaustible strike fund'.⁵³ A predictable consequence of this is that an employer will increase wages, improve the non-pecuniary benefits of a job, or both. Presumably, an employer will select between these possibilities on the basis of which is most efficient – that is, on the basis of which is less costly to her. This is significant, since these consequences help us in overcoming the narrowness problem and the efficiency problem.

⁵² Philippe Van Parijs, 'Basic Income: A Simple and Powerful Idea for the Twenty-First Century', *Politics & Society*, 32 (2004), 7-39 at 16-17; Williams, 'Basic Income and the Value of Occupational Choice'; and Erik Olin Wright, 'Basic Income as a Socialist Project', *Basic Income Studies*, 1 (2006), 1-11.

⁵³ Wright, 'Basic Income as a Socialist Project', 8.

We can therefore be confident, not only that insurers would select a policy granting an unconditional basic income, but also that this would be set at a level that defeats the insufficiency objection. Though insurers will incur a considerable premium, this is a price worth paying, once we factor in the policy's capacity to lessen the narrowness problem and the efficiency problem, in addition to the unemployment problem. For this reason, we should include an unconditional basic income in the package of policies that the model of fair insurance can justify.

To be sure, it would not solve all of the relevant problems to regulate the job market by introducing minimum wage legislation, earning subsidies, and an unconditional basic income. Though these combined policies offer some protection against the occupational disadvantage suffered by those not in paid employment, there is a worry about the adequacy of this protection. Whilst it is some consolation to have an income even if not in paid employment, for many individuals this lifestyle would not be a fulfilling one in the long-run. Under certain conditions, work is likely to be able to provide individuals with many further benefits. In other words, though these policies offer some assistance in overcoming the problems I have mentioned, it is implausible to set the level of unconditional basic income at a level that overcomes these problems entirely. For these reasons, we can expect insurers also to consider other policies.

6.5 Job Sharing

In the light of the conclusions of the previous section, an insurer may consider purchasing more radical job market interventions, including policies that promote job sharing. It is helpful to distinguish between two kinds of job sharing proposals. First, there are policies that operate by sharing more equally amongst two or more

employees the desirable and undesirable tasks that their jobs involve: those with highly desirable jobs are burdened with a greater-than-otherwise share of the undesirable tasks, and those with highly undesirable jobs are benefited by taking on a greater-than-otherwise share of the desirable tasks.

Second, there are policies that operate by making the distribution of a fixed supply of jobs fairer. Rather than living in a society in which some individuals are in paid employment for very long periods of time and some individuals are continuously out of paid employment, job sharing policies of this kind increase the likelihood of it being the case that all individuals will be in paid employment for some of the time, and all individuals will be out of paid employment for some of the time. In this section, I consider both kinds of proposals, beginning with the first.

6.5.1 Gomberg's Proposal

Gomberg helpfully illustrates the first idea of job sharing by describing how it might apply to the case of employees in a hospital:

The spirit of sharing routine and complex labor is expressed by the idea that everyone, including doctors, cleans up; no one need spend a full work week doing housekeeping. Doctors clean toilets. Doctors and nurses change bed linens. Similarly, no one need spend a full work week in the laundry room or peeling vegetables in the kitchen. Dieticians peel vegetables. Highly trained people share this labor.⁵⁴

This proposal is extreme. Gomberg claims not only that we should share more equally than otherwise the internal benefits and burdens of work, but also that we should share

⁵⁴ Gomberg, *How to Make Opportunity Equal*, 76. See also Spencer, 'Promoting High Quality Work'.

them ‘*as equally as possible* among all who are capable’.⁵⁵ The final qualification is crucial, for it means that Gomberg sensibly avoids claiming that we should share tasks amongst employees who are incapable of performing them. Therefore, he does not recommend that a hospital cleaner incapable of brain surgery be given the opportunity to perform a craniotomy. Having said this, Gomberg does believe that everyone is capable of doing any job, if given sufficient training.⁵⁶ I shall grant Gomberg this assumption, even though it strikes me as wildly optimistic, especially with respect to people with severe cognitive or physical disabilities.

Though Gomberg describes what the workplace might look like if we were to adopt his job sharing proposal, he does not specify the mechanisms that bring about this result.⁵⁷ One possibility is to establish a government body to regulate workplaces so as to secure an equal distribution of the desirable and undesirable tasks amongst all workers who are capable. Perhaps, for example, this body should have the power financially to penalise organisations that fail to live up to this standard. This sounds like a bureaucratic nightmare. An alternative possibility is to rely upon the self-regulation of employers and employees. On this view, perhaps we can hope for employers and employees to internalise a pro-job-sharing ethos that requires that they make a good faith effort.⁵⁸ From the perspective of an insurer, not much turns on which version we adopt. For this reason, I shall not assume either in particular.

To clarify, then, an insurer is given the option of taking out a policy that – in securing an equal distribution of the internal benefits and burdens of work, such that no worker’s overall bundle of tasks is more desirable than another’s – would fully

⁵⁵ Gomberg, *How to Make Opportunity Equal*, 76 [emphasis in original].

⁵⁶ Gomberg, *How to Make Opportunity Equal*, ch. 10.

⁵⁷ Gomberg says: ‘These details need not concern us’. See his *How to Make Opportunity Equal*, 76.

⁵⁸ This suggestion is akin in structure to the ethos defended in Cohen, *Rescuing Justice and Equality*, ch. 5.

indemnify her against the risk of suffering one kind of occupational disadvantage, namely the occupational disadvantage suffered by employees who must perform burdensome work. Presumably, Gomberg also intends that we also secure an equal distribution of the external benefits and burdens of work, so that no worker suffers overall occupational disadvantage, where we calculate this by reference to both the internal and external benefits and burdens of her work.

As I have presented it, Gomberg's aim is to secure the equal distribution of desirable and undesirable tasks amongst all *workers*. On an alternative reading of this view, the aim is to secure the equal distribution of desirable and undesirable tasks amongst all *individuals*. Unlike the second interpretation, the first interpretation is consistent with a high rate of unemployment and, thus, it does nothing to alleviate the unemployment problem. The reason I favour this interpretation is not because I am confident that it is the one Gomberg has in mind. It is instead because it allows us to focus more directly on the most distinctive components of the proposal.

We can now identify four kinds of cost that are relevant to the appeal of such a proposal. First, there are the costs that fall on employees who would otherwise be occupationally advantaged. To illustrate this cost, we can consider the case of a surgeon who would perform predominantly desirable tasks, but who would then be burdened by such a policy, since she would now be required to take on an equal share of undesirable tasks, such as cleaning toilets and changing bed linens. These costs may be considerable, but for only a small proportion of employees.

Second, job sharing proposals of this kind restrict an individual's freedom to contract and, on the plausible assumption that she has an interest in being free from such restrictions, we should register this as a cost. This is independent from the previous cost in so far as an individual may retain an interest in being free from such

restrictions even if she does not value exercising that freedom.⁵⁹ For many individuals, this cost will not be a high one. This is because, even in the absence of such legislation, many individuals lack the bargaining power to negotiate their own terms of contract and, instead, must choose between the various offers that employers make. For this reason, these costs do not count decisively against the present proposal.

Let's now turn to the third and fourth kinds of cost, both of which are more damaging to Gomberg's proposal. The third cost is the administration cost. Though these costs are highest when we use government regulation to enforce Gomberg's proposal, there remain considerable costs even when the proposal utilises a pro-job-sharing ethos. This is because, in order for such an ethos to be effective, the relevant parties must have access to wide range of information concerning how valuable or disvaluable a range of tasks are to different employees.⁶⁰ This is important for a number of reasons, including those that I mentioned earlier when discussing our reasons to prefer policies that make use of more publicly verifiable information.

Finally, even if we (generously) grant Gomberg the assumption that everyone is capable of doing any job if given sufficient training, we ought not to accept the further claim that it is equally costly to provide that training. When evaluating the appeal of this proposal, therefore, insurance firms would reflect upon the fact that it may be very

⁵⁹ We must be careful here. This is because there is a sense in which Gomberg's proposal would not restrict an individual's freedom to contract when its presence results from her own choices under the fair conditions specified by the model of fair insurance. In this sense, restrictions on an individual's permissible choices are freely accepted. None the less, there remains a distinct sense in which her freedom is restricted by these measures. This corresponds to the idea that an individual has an interest in her life being guided by her actual consent that goes beyond her interest in her life being guided by her hypothetical consent.

⁶⁰ Williams, 'Incentives, Inequality and Publicity'.

costly to provide the training that is necessary fully to indemnify an employee against the risk of suffering occupational disadvantage. To return to Gomberg's hospital example, presumably it is much more costly to train some people to be competent brain surgeons than it is others. If this is the case, the policy's premium should reflect these additional costs, which are likely to be considerable in at least a large range of cases. Moreover, it may also be the case that specialisation has many practical benefits. Even if it is equally costly to train one hundred people to become competent brain surgeons, it may be in one way better to have ninety competent brain surgeons and ten cleaners rather than to have one hundred competent brain surgeons who spend some of their cleaning.⁶¹

The final of these costs reveals what is particularly unappealing about Gomberg's proposal, namely that, because of the expensive training that it requires, we can fund it only through the payment of very high premiums. It is clear, I think, that many insurers would be put off by these very high costs and, for this reason, we can be confident that the vast majority of insurers would not select Gomberg's proposal. By implication, we can conclude that Gomberg's proposal would not feature in the package of policies that we can justify by appeal to the model of fair insurance.

We can express this criticism of Gomberg's defence of the job sharing proposal in terms of the following trilemma, which I shall call the *occupational trilemma*:

- (1) We should eliminate the risk of occupational disadvantage.
- (2) We should ensure that tasks are performed only by those competent to perform them.
- (3) We should not subsidise expensive training costs.

⁶¹ Fishkin, *Bottlenecks*, 52.

We can accept any pair of claims, but not all three. If we accept (1), then we can accept either (2) or (3) but not both. This is because, in order to ensure that tasks are performed only by those competent to perform them, we need to provide expensive training. If we accept (2), then we can accept either (1) or (3) but not both. This is because, in order to eliminate the risk of occupational disadvantage, we again need to provide expensive training. Finally, if we accept (3), then we can accept either (1) or (2) but not both. This is because, in order to eliminate the risk of occupational disadvantage, we need to allow tasks to be performed by those not competent to perform them. Gomberg seems to want to reject (3), but it is clear that this would not be appealing to many insurers, given the very high costs of the associated premiums. Instead, it is much more appealing to insurers to reject (1), in turn ruling out the possibility that we can justify Gomberg's job sharing proposal by appeal to the model of fair insurance.

In response, Gomberg may revise his position. He could concede that we ought not to fund training when it is very costly to do so, such as when the costs of training or specialisation are above some threshold. If the policy were to operate in this way, insurance firms would not have to charge such a high premium. The reduced premium would make the job sharing model more appealing than otherwise to insurers. Significantly, however, in order to be plausible, we would have to set the threshold at a very low level. Our concern for the working life of a hospital cleaner may justify imposing some additional cleaning duties on doctors but, presumably, these will be only very minimal, given that the doctor could instead be using her time to perform possibly life-saving operations that only she is competent to perform. To the extent that Gomberg is willing to embrace this serious revision of his proposal, this undermines the significance of its contribution to an account of justice in work.

6.5.2 Compulsory Retirement

Let's now turn to the second kind of job sharing proposal, which operates by making the distribution of a fixed supply of jobs fairer. I shall focus on one example of a policy of this kind: compulsory retirement. Compulsory retirement does not increase the supply of jobs, but instead ensures that they are distributed more fairly. To illustrate this point, let's suppose that the government needs fifty years' worth of work carrying out. It can either (i) allocate all of the work to one person or (ii) allocate twenty-five years' worth of work to two individuals. Compulsory retirement policies favour the latter. This policy is interesting in part because it treats age or seniority (which refers to the number of years in paid employment) as morally relevant for the just distribution of occupational opportunities, when in general these factors are deemed irrelevant.^{62,63}

With respect to this proposal, insurers face the following option: in return for being forced to retire at a given age or level of seniority, an insurer would receive an increase in her likelihood of having opportunities for paid employment. The age or level of seniority at which the policy requires retirement is set determines the size of the increase: if it is set at a high level, then it will generate only a comparatively small increase in opportunities for paid employment; and if it is set at a low level, then it will generate a comparatively large increase.

⁶² Norman Daniels, 'Justice between Adjacent Generations: Further Thoughts', *The Journal of Political Philosophy*, 16 (2008b), 475-94 at 479.

⁶³ I do not examine whether we have reason to prefer seniority-based compulsory retirement policies or age-based compulsory retirement policies. For discussion of this issue, see Axel Gosseries, 'Are Seniority Privileges Unfair?', *Economics and Philosophy*, 20 (2004), 279-305; and Axel Gosseries, 'What Makes Age Discrimination Special? A Philosophical Look at the ECJ Case Law', *Netherlands Journal of Legal Philosophy*, 43 (2014), 59-80.

The appeal of such a policy depends upon a number of factors, the most significant of which relates to the kind of pension plans that individuals retire into. If pensions are low such that individuals retire into poverty, this will count against the appeal of such a policy. However, on the assumption that this is not (or ought not to be) the case, the policy strikes me as a highly appealing one.

This is not to say that compulsory retirement policies would not impose costs on insurers. They impose similar costs to the kind I mentioned when discussing Gomberg's proposal: compulsory retirement imposes costs on individuals who want to work beyond the cut-off point; it imposes costs on all individuals by restricting their freedom to contract; it involves certain administration costs; and it may involve additional training costs. However, the important point is that these costs are smaller in the case of compulsory retirement and, as a result, we can be much more confident that many individuals would regard them as a price worth paying for their associated benefits.

To illustrate the present argument more clearly, it may help to compare this justification of compulsory retirement to a justification discussed by Norman Daniels. Daniels considers a defence of compulsory retirement that relies upon a kind of paternalism. He writes:

Arguably...a policy of compulsory retirement could be uniformly applied over whole lives, creating no inequalities across persons. Each person gets improved job opportunity when young in exchange for compulsory retirement when older. Under some conditions of job scarcity, *compulsory retirement might even make each life go better for all than an alternative policy and so compulsory retirement might be prudent to adopt*.⁶⁴

⁶⁴ Daniels, 'Justice between Adjacent Generations', 479 [emphasis added].

To be sure, I do not mean to claim that Daniels defends compulsory retirement exclusively, or indeed predominantly, by appeal to these ideas. Daniels' views are complex, and he advances a range of distinct arguments. I mention this argument only because it provides a helpful contrast with the argument in defence of compulsory retirement that I defend.

This justification relies upon premises that are more controversial than those upon which my argument relies. According to Daniels's quotation, when we prohibit an individual from accepting paid employment beyond a given age or level of seniority, we can justify this by referring to the benefits to her of this rule. In order for this defence to succeed, therefore, we must accept that everyone benefits from compulsory retirement. This need not be the case for the justification that I advance. Though my justification makes use of the fact that compulsory retirement often benefits individuals, when we prohibit an individual from accepting paid employment beyond a given age or level of seniority, it justifies this by referring to the idea that she would have agreed to this policy under fair conditions. The success of this justification does not depend upon compulsory retirement benefiting everyone. Just as we can justify the progressive taxation to those individuals whom it does not benefit, so too we can justify compulsory retirement in the same way.

The aim of this section has been to appeal to the model of fair insurance in order to defend compulsory retirement as part of a bundle of job market interventions designed to respond to occupational disadvantage. The policy is interesting in part because it provides a response to one of the inadequacies of minimum wage, earning subsidies, and an unconditional basic income, which together fail fully to overcome the unemployment problem. Compulsory retirement is helpful in this respect since, although it does not increase the supply of employment opportunities, it helps to secure a fairer distribution.

6.6 Working Time Directives

Though an insurer will surely be motivated to increase her opportunities for paid employment, and so mitigate the unemployment problem, there is an opposing worry that may also feature in her deliberations. This concerns the fact that many employment contracts are all-encompassing, in the sense that they demand that an employee work long hours that may leave her with little time for other pursuits. This is the danger of employees being overworked. In the United Kingdom, for example, nearly one in five employees works at least forty-five hours per week, with forty eight per cent of adults reporting relatively low satisfaction with their work-life balance.⁶⁵ Commenting on the situation in the United States, Jerry Jacobs and Kathleen Gerson note that the combined working time of couples has risen sharply: ‘As revolutionary social and economic shifts have propelled most women into the workplace and left most American households depending on either two workers or one parent, deepening time dilemmas are a logical consequence of the clash between changing family forms and intransigent, time-greedy workplaces’.⁶⁶

In response to this, an insurer may consider choosing a policy that protects her against overwork. Working time directives provide one possibility. Work time directives decrease the length of the work day and/or week, thereby enabling an employee to reallocate time from paid employment to other pursuits, such as parenting

⁶⁵ Carla Seddon, ‘Measuring National Well-being – What we do, 2012’, *Office for National Statistics*, March 2012, available at http://www.ons.gov.uk/ons/dcp171766_258996.pdf.

⁶⁶ Jerry Jacobs and Kathleen Gerson, *The Time Divide: Work, Family, and Gender Inequality* (Cambridge, MA.: Harvard University Press, 2004), 4. Jacobs and Gerson also note that the American employees tend to spend more time at work than many other industrial countries. See Jacobs and Gerson, *The Time Divide*, 133-4.

or caring, relaxing, or hobbies. Policies that protect an employee's right to a minimum number of paid days off have also been endorsed, as have policies that increase the supply and quality of part-time paid employment opportunities.⁶⁷ For simplicity, and because these are already in place in many societies, such as within the European Union, I shall consider compulsory working time directives that legally prohibit an employee from working more than forty eight hours per week on average.

The need for compulsory working time directives arises from the fact that, without this legislation, an employee may lack the bargaining power that enables her to tailor her hours of work to her ambitions. This leads to the possibility that she may have to choose between being unemployed and being overworked.⁶⁸ An unconditional basic income, which already features in the package of policies I am considering, would help to reduce this inequality in bargaining power. However, it would not do so fully, and working time directives provide a further mechanism to help to meet this goal. They achieve this by replacing the option of being overworked with the option of working a maximum of forty eight hours per week on average. This is the coverage that the policy provides. (It may be possible to devise a policy that does not replace the option of being overworked but instead provides an additional option of working a maximum of forty eight hours per week on average. Perhaps this could be achieved by

⁶⁷ See Jody Heymann, *The Widening Gap: Why America's Working Families are in Jeopardy and What Can Be Done About It* (New York: Basic Books, 2000); Jacobs and Gerson, *The Time Divide*; and Erik Olin Wright (ed.), *Real Utopias: Institutions for Gender Egalitarianism: Creating the Conditions for Egalitarian Dual Earner/Dual Caregiver Families* (Madison: University of Wisconsin Press 2009).

⁶⁸ Empirical evidence supports this idea. See Linda Bell and Richard Freeman, 'Why do Americans and Germans work different hours?', in Friedrich Buttler, Wolfgang Franz, Ronald Schettkat, and David Soskice (eds), *Institutional Frameworks and Labor Market Performance: Comparative Views on the U.S. and German Economies* (New York: Routledge, 1995); and Shulamit Kahn and Kevin Lang, 'Constraints on the Choice of Work Hours: Agency Versus Specific-Capital', *Journal of Human Resources*, 27 (1992), 661-78.

allowing individuals to opt out of the working time directive, which is currently the case in the United Kingdom. I am sceptical of the effectiveness of this policy. This is because, in allowing individuals to compete with each other by offering to opt out, this amendment partially undermines the positive effect of working time directives.)

Before considering the policy's premiums, it is important to note that working time directives may have other attractive implications that increase the likelihood that they will be attractive to insurers. For one, some evidence suggests that working time directives increase men's performance of unpaid domestic labour.⁶⁹ On the assumption that a gendered distribution of unpaid domestic labour is unjust, this fact may provide a further reason in support of introducing working time directives.

The policy's premium has four aspects. First, there are the productivity costs that result from being a member of a society in which each employee's paid economic contributions are capped at forty eight hours per week. It is difficult to speculate about the extent of these costs, but the available evidence suggests that they will be minimal. That is, the evidence suggests that employees who work shorter hours tend to work more productively and, in some case, this increase in productivity defeats the fact that the employee works fewer hours.⁷⁰ For this reason, these costs are likely to be small, certainly not high enough to dissuade many insurers from choosing the present policy.

Second, there are the administration costs of initiating and maintaining such a proposal. Again, these costs will not be high, certainly not sufficiently high to dissuade

⁶⁹ Jennifer Hook, 'Care in Context: Men's Unpaid Work in Twenty Countries, 1965-2003', *American Sociological Review*, 71 (2006), 639-60.

⁷⁰ For a summary of the relevant literature, see Lonnie Golden, 'The Effects of Working Time on Productivity and Firm Performance: A Research Synthesis Paper', *International Labour Office*, (2011), available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_187307.pdf.

many insurers from selecting the policy. This is because the policy does not demand the close monitoring of firms, but we can instead integrate it with the tax system. Many existing nation states and regions, such as the European Union, illustrate the ease with which we can achieve this.

Third, there are the costs that fall on those employees who want to work for more than forty eight hours per week on average, but who would be unable to do so if the policy were brought into effect. These individuals could be highly burdened by such a policy, especially if they attach considerable importance to their working life or to the additional income brought to them by the extra hours at work. I concede that this cost may be sufficient to put off some individuals. However, the policy remains justifiable by appeal to the model of fair insurance on the grounds that, though some individuals would not select the policy, it retains widespread appeal to a large number of individuals. The important point is that relatively few individuals attach so much importance to being able to work more than forty eight hours per week on average. As evidence of this, we can consider the vast number of committed parents who attach considerable significance to being able to spend decent time with their children and grandchildren. These individuals are very likely to regard working time directives as strongly serving, rather than frustrating, their ambitions.⁷¹

Finally, working time directives restrict an individual's freedom to contract and, on the plausible assumption that she has an interest in being free from such

⁷¹ In virtue of being based on the model of fair insurance, this defence of working time directives is anti-perfectionist. As I explained in the previous chapter, Fair Insurance relies upon claims about individuals' ambitions, but not controversial claims about the value of the family. This feature of the present defence of working time directives is important, since it provides a response to one of the worries expressed in Brighouse and Swift, 'Parents' Rights and the Value of the Family', 106-7.

restrictions, we should again register this as a cost.⁷² This is independent from the previous cost in so far as an individual may retain an interest in being free from such restrictions even if she does not value exercising that freedom. The vast majority of individuals will not regard this as a great cost. This is in part for the familiar reason that, even in the absence of such legislation, many individuals lack the bargaining power to negotiate the number of hours they must work per week and, instead, must choose between being unemployed and being overworked. For this reason, these costs do not count decisively against the present proposal.

The aim of this section has been to defend working time directives as part of the bundle of policies that we can justify by appeal to the model of fair insurance. More specifically, we can appeal to the model in order to justify a package of policies that includes working time directives that prevent an employee from working longer than forty eight hours per week on average. This conclusion is a modest one, but I leave open the possibility that we can justify more radical interventions on the same grounds. Perhaps, for instance, we can justify capping hours at an even lower number, say, forty hours per week on average. I suspect that the justifiability of this policy depends on specifics that make this claim impossible to evaluate in general, but I mention it to show the versatility of my approach.

6.7 Conclusion

As a device for theorising about the just response to occupational disadvantage, the model of fair insurance is appealing in part because it directs our attention towards a wide range of interventions in the job market. My aim in this chapter has been to

⁷² See page 225, n. 59.

explore the consequences of this model and, thereby, to make progress with developing a more complete account of justice in work. More specifically, I have advanced a pluralist answer, whereby the just response to occupational disadvantage requires introducing an eclectic package of regulations that, together, protect a diverse set of interests that the job market affects. Though I have evaluated each component of this package on a one-by-one basis, I have sought to do this in a way that is sensitive to how each interacts with other policies.

It bears repeating that, throughout this chapter, I have been concerned with disadvantage-based job market regulation in particular. That is, I have sought to determine the social institutions that arrange and distribute work in a way that responds justly to occupational disadvantage. It is in principle consistent with this that our concern for other values provides us with reasons to introduce other social institutions, including institutions that I have recommended not introducing. For example, if it is true that we have very weighty reasons to ensure that individuals get what they *deserve*, these reasons may compete with, and in some cases defeat, our reasons to favour the disadvantage-based interventions that I have defended. Though I am sceptical of this possibility – indeed, I am sceptical of the moral force of desert more generally – it is clearly beyond my remit to defend this verdict here. For this reason, my arguments in this thesis remain importantly incomplete.

7 Productive Duties

In developing our account of justice in work, I have been primarily concerned with the claims that an individual may justly make upon society with respect to her occupational opportunities. In this final chapter, I turn my attention to the opposite issue, namely, to the claims that society may justly make upon its members' occupational choices and, in particular, to the idea that individuals may have a *productive duty* to make a socially beneficial contribution.^{1,2}

My aim is to defend a nuanced position that neither accepts nor rejects productive duties wholesale. Instead, I distinguish between different kinds of productive duties on the basis of whether or not they unduly threaten social unity, and then I appeal to this distinction in order to show that individuals can possess only certain kinds of productive duties. The details of this view are complex, and the arguments that support it make use of ideas that may be less familiar to some readers. For these reasons, I think it makes most sense not to attempt to summarise it here.

My argument develops as follows. In section 7.1, I clarify the subject of my inquiry by highlighting the distinctive properties of the kinds of duties in which I am interested. In section 7.2, I then report three justifications that we might give in defence of productive duties. The first appeals to ideas that support Rawls's justice as fairness; the second appeals to reciprocity; and the third appeals to the model of fair

¹ I take the term 'productive justice' from Lucas Stanczyk, 'Productive Justice', *Philosophy & Public Affairs*, 40 (2012), 144-64.

² The distinction between an individual's claims on her society and society's claims on its members is somewhat artificial. After all, when an individual makes claims on her society, she makes claims on other individuals. Despite this, I hope that this distinction helps up separate the two kinds of questions that we may ask.

insurance. In section 7.3, I then defend an objection to these three arguments. Inspired by Williams's work on the implications of the importance of social unity, this objection states that: at least under certain conditions, we have weighty reasons to refrain from imposing on individuals productive duties compliance with which is not publicly verifiable either to the duty-bearers or to other individuals.³ The objection is not an objection to productive duties as such, but instead an objection only to a certain class of productive duties. In the remainder of the chapter, I consider three further objections that claim to impugn productive duties more generally. The first two objections, which I consider in sections 7.4 and 7.5, draw upon claims about the value of free occupational choice. The third objection, which I consider in section 7.6, appeals to considerations of fairness. I argue that each of these objections fails or, more modestly, that each has only very limited success. I conclude in section 7.7.

To clarify the contribution of this chapter, it may help to clarify its relationship with the rest of this thesis. Unlike the previous chapters, which are cumulative, in the sense that they build upon the conclusions of the chapters that come before them, my analysis in this chapter does not depend upon my earlier commitments. That is, the account of justice in work that we already have does not in any straightforward sense determine my treatment of productive duties. In this respect, this chapter is somewhat of an outlier. None the less, I remain motivated by a concern for the same kinds of values, and I intend for my contribution here to be consistent with – indeed, to cohere with – my earlier conclusions.

³ Williams defends various parts of his view in a number of different places, including Andrew Williams, 'Incentives, Inequality, and Publicity'; Andrew Williams, 'Justice, Incentives, and Constructivism', *Ratio*, 21 (2008a), 476-93; Andrew Williams, 'Liberalism, Community, and Anti-Perfectionism', (unpublished manuscript); and Williams, 'Political Constructivism'.

7.1 Productive Duties and their Variants

The kind of productive duties in which I am interested have five properties that distinguish them both from other kinds of productive duties, as well as from other, closely related kinds of duties.

First, productive duties are duties to make a socially beneficial contribution. They are duties to increase the supply of resources available either to society or to some sub-section of it, say, its least advantaged members. By defining productive duties in this way, I make room for the possibility that an individual may lack a productive duty to increase the supply of resources available to society when doing so, somehow, reduces the supply of resources available to the least advantaged in particular.

We can construct different kinds of productive duties by allying this definition with different views about what qualifies as a resource. In the most part, these disagreements track deeper disagreements. For example, whereas friends of Rawls may characterise the duty in terms of social primary goods, critics of Rawls are likely to disagree. Since I intend for my arguments to have broad appeal, I shall leave open what counts as a resource.

To clarify further the demands of productive duties, it may help to distinguish them from two other duties. First, there may be a duty not to decrease the supply of resources.⁴ This duty is in one respect less demanding, since an individual can discharge this duty simply by maintaining the current supply of resources. Second, there may be a duty to avoid becoming dependent upon state aid. It is more difficult to

⁴ The case of perishable goods reveals how there are different versions of this duty. Does an individual violate her duty not to decrease the supply of resource if she allows goods to perish and but then does not replace them? On another version of the duty, she does; on another version of the duty, she doesn't.

evaluate the relationship between productive duties and this duty, since its content is somewhat unclear. In particular, it is unclear what qualifies as state aid. If an individual becomes dependent upon the state's health service, but helped to fund this service through paying taxation earlier in her life, does she violate the duty to avoid becoming dependent upon state aid or is she simply enjoying entitlements that she has already paid for? To answer this question, we need a fuller account of the demands of this duty, which is beyond the scope of this chapter.⁵

Second, we can distinguish between two kinds of productive duties depending upon whether they require her to make a socially beneficial contribution or a socially beneficial *net* contribution. According to the former, an individual discharges her productive duty by making a socially beneficial contribution, even if she also makes a socially harmful contribution of equal or greater size. By contrast, according to the latter, an individual discharges her productive duty by making a socially beneficial contribution only if she also does not make a socially harmful contribution of equal or greater size. The latter duty is more demanding than the former. It is also the duty in which we are interested and, for this reason, when I refer to socially beneficial contributions I mean to refer to socially beneficial net contributions.

Third, productive duties vary considerably in their demandingness. There are two dimensions to this claim. First, they vary in the demandingness of their content. At one extreme, the duty imposes on an individual a demand that she maximise her social contribution. This requires that she increase the supply of resources as much as she can. At the other extreme, the duty requires only that she make some, perhaps negligible, social contribution. This requires that she increase the supply of resources only to at least some minimal degree. In most cases, advocates of productive duties

⁵ For further discussion of these issues, see Mason, *Living Together as Equals*, ch. 3.

favour something in between these two extremes. For example, Cohen, who is a defender of productive duties, incorporates a *personal prerogative* that permits an individual to depart somewhat from maximising her social contribution.⁶ Similarly, White defends a productive duty to make a social contribution that is *proportionate* to one's ability and circumstances.⁷ I shall say more about this in the next section, where I examine different defences of productive duties. Second, productive duties vary in their stringency. A duty's stringency depends upon the costs to the duty-bearer that are sufficient to vitiate the duty; the greater the costs that the duty-bearer ought to be willing to bear, the more stringent the duty.⁸ At one extreme, the duty could be so stringent that an individual ought still to comply with it even if it will cost her life. At the other extreme, the duty could be vitiated if the individual would be required to bear more than the most minimal costs. Again, in most cases, advocates of productive duties favour something in between these two extremes.

Fourth, though my interest is in productive duties more generally, I focus predominantly on moral duties rather than legal duties. As moral duties, productive duties impose a moral demand on an individual such that, if she does not make a socially benefit contribution, she acts immorally. For the most part, I shall not engage with the further question relating to whether or not we ought to enshrine moral productive duties in law, such that, if an individual does not discharge her moral duty, she acts illegally. The reason for this is, in part, because the relationship between moral

⁶ Cohen, *Rescuing Justice and Equality*, 10-11, 61-2, 387-94. Cohen's personal prerogative is inspired by, and closely resembles, the sort advocated in Samuel Scheffler, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions* (New York: Oxford University Press, 1982).

⁷ White, *The Civic Minimum*, ch. 3.

⁸ Here I follow Tadros, 'Rights and Security'.

duties and legal duties is a highly complex one, and we would have to address a large range of further issues in order to resolve these complications. For instance, we may have reasons to criminalise an activity that an individual would otherwise be morally permitted to pursue, as well as have reasons not to criminalise certain morally prohibited activities.⁹

Fifth, we should distinguish between institutional duties and individual duties. Institutional duties are duties that an individual discharges through her involvement in building or sustaining certain institutions, where institutions refer to ‘a public system of rules...[that] specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defences, and so on, when violations occur’.¹⁰ In this case, an individual has a duty to build and sustain institutions that help each individual to make a socially beneficial contribution, but she lacks an individual duty to be guided by these considerations when selecting which job to pursue. As Rawls points out, when this is the case, ‘what kind of work people do, and how hard they do it, is up to them to decide in light of the various incentives society offers’.¹¹ By contrast, individual duties are duties that an individual discharges individually, independently of her involvement in building or sustaining such institutions. In this case, an individual also has a duty to select her job in a way that is guided, at least to some extent, by the importance of making a socially beneficial contribution.

There are philosophically interesting and politically important questions about both institutional and individual productive duties. However, I shall focus on the latter only. This is primarily because these are the duties around which there is a greater

⁹ For further discussion, see Victor Tadros, ‘Wrongs and Crimes’, (unpublished manuscript).

¹⁰ Rawls, *A Theory of Justice*, 47-8.

¹¹ Rawls, *Justice as Fairness*, 64. See also Rawls, *Political Liberalism*, 266-9. For further discussion, see Brian Berkey, ‘Obligations of Productive Justice: Individual or Institutional?’, (unpublished manuscript).

degree of controversy. After all, it is much less controversial to claim that there is a duty to uphold institutions that incentivise or otherwise help others to make socially beneficial contributions.¹²

Finally, let me note that, by upholding productive duties, we are not necessarily committed to the result that individuals incapable of making socially beneficial contributions are wrongdoers.¹³ As with many other duties, inability can be sufficient to vitiate productive duties.¹⁴ Just as an individual lacks a moral duty to save a drowning child if she cannot swim and so there is no possibility of saving the child, so too an individual lacks a productive duty if she is unable to make a socially beneficial contribution. Productive duties are not distinctive in this regard. I mention this only to clarify the content of the claims that we shall now examine.

7.2 Justifying Productive Duties

One way in which we may defend productive duties is to appeal to the idea that an individual may be duty-bound to benefit another when she can do so by bearing a cost that is significantly smaller than the magnitude of the benefit in question. This idea is a close cousin of one that motivates the duty of rescue, which states that an individual may be duty-bound to prevent something bad from happening (such as to prevent a child from drowning in a pond) when she can do so by bearing a cost that is significantly smaller than the magnitude of the benefit in question.¹⁵ The former duty is

¹² Cohen, *Rescuing Justice and Equality*, 374-5.

¹³ Becker, 'The Obligation to Work', 41.

¹⁴ Ibid.

¹⁵ The canonical discussion of the duty to rescue can be found in Peter Singer, 'Famine, Affluence, and Morality', *Philosophy & Public Affairs*, 1 (1972), 229-43. See also Tadros, *The Ends of Harm*, 252.

distinct from the duty of rescue, since it may require an individual to provide a benefit to another who is not badly off and who is not facing a threat.

I shall not evaluate this justification of productive duties. This is because, even if this justification is successful, the productive duties that it supports will not be very stringent. An individual's preference for gardening rather than doctoring, for example, will often be sufficient to vitiate her productive duty, when it is justified and understood in this way.¹⁶ This is an implication of the fact that the duty to benefit another is plausible only if the duty-bearer can be required to bear costs that are, at most, significantly smaller than the magnitude of the benefit in question. With this in mind, I shall now consider three further justifications of productive duties, all of which seek to defend significantly more demanding productive duties.

7.2.1 The Distributive Justice Argument

The first justification that I shall examine is the *distributive justice argument*, which is developed most forcefully by Cohen. Cohen begins with Rawls's justice as fairness and, in particular, the claim that distributive justice demands that we arrange society's basic structure so that it is to the greatest benefit of the least advantaged.¹⁷ But, what exactly is the basic structure?

Cohen discusses two possibilities.¹⁸ According to the *coercion account*, the basic structure refers only to society's legally coercive institutions. On this view, distributive justice demands that we arrange society's legally coercive institutions – its constitution

¹⁶ I say 'often', since this may not always be the case, such as in emergency cases. See Rawls, *A Theory of Justice*, 333-4.

¹⁷ I put to one side the complications that I discussed in section 2.5.1.

¹⁸ Cohen, *Rescuing Justice and Equality*, ch. 3.

and legislation, and public policy, say – so that they are to the greatest benefit of the least advantaged, but it permits individuals not to be guided by a concern for the least advantaged when making legally permissible choices. By contrast, according to the *profound importance account*, the basic structure refers to those actions that affect individuals without their consent but have a significant effect on their motivation or access to certain goods. On this view, distributive justice demands that we arrange all those institutions that affect individuals' life chances, including both coercive institutions as well as personal choices, so that they are to the greatest benefit of the least advantaged. When this is the case, distributive justice demands not only that we arrange society's legally coercive institutions so that they are to the greatest benefit of the least advantaged, but also that individuals are guided predominantly by a concern for the least advantaged when making personal choices.

According to Cohen, it is unclear which of these accounts Rawls endorses.¹⁹ On the one hand, Rawls makes a number of statements that suggest his support of the coercion account. For instance, he claims 'the law defines the basic structure within which the pursuit of all other activities takes place'.²⁰ However, Rawls's rationale – and, according to Cohen, the only possible rationale – for focusing exclusively on the basic structure appeals to considerations that seem to support the profound importance account.²¹ Rawls says that 'the basic structure is the primary subject of justice *because its effects are so profound and present from the start*'.²² This lack of clarity regarding the definition of the basic structure is interesting to Cohen not (only) for dreary exegetical reasons, but (also) because he believes it reveals a dilemma for Rawls:

¹⁹ Cohen, *Rescuing Justice and Equality*, 132.

²⁰ Rawls, *A Theory of Justice*, 207.

²¹ Cohen, *Rescuing Justice and Equality*, 132.

²² Rawls, *A Theory of Justice*, 7 [emphasis added].

For he must either admit application of the principles of justice to (legally optional) social practices, and, indeed, to patterns of personal choice that are not legally prescribed, both because they are the substance of those practices, and because they are similarly profound in effect, in which case the restriction of justice to structure, in any sense, collapses; or, if he restricts his concern to the coercive structure only, then he saddles himself with a purely arbitrary delineation of his subject matter.²³

Cohen believes that Rawls and his supporters are forced to embrace the first horn of the dilemma. In doing so, Cohen accepts the profound importance account, and thus contends that distributive justice demands that individuals are guided predominantly by a concern for the least advantaged when making personal choices. If correct, the present argument provides a distributive-justice-based defence of productive duties. When an individual chooses whether or not to make a socially beneficial contribution, she makes a personal choice that has a profound effect on others' life chances, and so ought to be predominantly guided by a concern for the least advantaged.

Finally, let me draw attention to the fact that Cohen believes that individuals should be guided *predominantly* by a concern for the least advantaged when making personal choices, rather than *exclusively* by a concern for the least advantaged. More specifically, he permits an individual to give some further weight to other considerations, such as her own interests, when making personal choices. His view thus incorporates a personal prerogative that permits an individual to refrain from maximising her social contribution.²⁴ It is in virtue of this that the productive duties Cohen favours are less than maximally demanding.

²³ Cohen, *Rescuing Justice and Equality*, 132.

²⁴ For an analysis of relationship between the considerations that motivate Cohen's inclusion of a personal prerogative and his wider project, see Paula Casal, 'Occupational Choice and the Egalitarian Ethos', *Economics and Philosophy*, 29 (2013), 3-20.

7.2.2 The Reciprocity Argument

I shall now turn my attention to the second justification of productive duties, which we can call the *reciprocity argument*. White summarises the central thought as follows:

where the institutions that govern economic life are sufficiently fair in terms of the opportunities they afford for productive contribution, and the awards they apportion to it, those citizens who claim the high share of the social product available to them under these institutions have an obligation to make a decent productive contribution, proportionate to their abilities, to the community in return.²⁵

According to the reciprocity argument, when an individual fails to discharge a duty of reciprocity, not only does she display a lack of *gratitude* for the benefit she has received, she also *exploits* the efforts of others who bear costs in order to produce the benefits in question. Though both ingratitude and exploitation may be morally objectionable, perhaps even unjust, proponents of the reciprocity argument tend to focus primarily on the latter, since, within political morality, exploitation-based complaints seem to have greater force than ingratitude-based complaints.²⁶

We can flesh out the reciprocity argument, as well as the ideas that motivate it, in many different ways. Here is not the place to do that. Instead, let me draw attention to two properties that all versions of the argument share. First, in order to trigger duties of reciprocity, the recipient of a benefit must *willingly* enjoy the fruits of others' efforts, such that she does not owe a duty of reciprocity if she is indifferent to those

²⁵ White, *The Civic Minimum*, 49. See also Lawrence Becker, 'The Obligation to Work', *Ethics*, 91 (1980), 35-49 at 39.

²⁶ Shlomi Segall, 'Unconditional Welfare Benefits and the Principle of Reciprocity', *Politics, Philosophy & Economics*, 4 (2005), 331-54 at 336.

benefits or ‘enjoys’ them unwillingly.²⁷ We can understand ‘willingness’ in many different ways, and each of these generates a different version of the reciprocity argument.²⁸ Second, duties of reciprocity may arise even when the benefits accrue to an individual not as a result of an attempt intentionally to benefit her, but instead as a result of some other intentional action.²⁹ This feature of the reciprocity argument is particularly controversial, since many hold that such duties arise only if the individual in question is the beneficiary of an action intended to benefit her.³⁰ Rather than examine this objection, I shall focus on other, more general objections to productive duties.

Before turning to those objections, however, it is important to comment in further detail on the content of the productive duties that the reciprocity argument purportedly justifies. Here, I shall make two points. First, we can distinguish between *strict equivalence* conceptions of reciprocity and *fair dues* conceptions of reciprocity.³¹ According to the former, a beneficiary has a duty of reciprocity to make a social contribution that is strictly equivalent in value to the benefits that she enjoys. If an individual benefits by x , therefore, then she has a productive duty to contribute x . By

²⁷ White, *The Civic Minimum*, 50.

²⁸ For further discussion of ‘willingness’ within arguments of this kind, see George Klosko, ‘Presumptive Benefit, Fairness, and Political Obligation’, *Philosophy & Public Affairs*, 16 (1987), 241-59.

²⁹ White, *The Civic Minimum*, 50.

³⁰ See Paula Casal, ‘Environmentalism, Procreation, and the Principle of Fairness’, *Public Affairs Quarterly*, 13 (1999), 363-76; and Paula Casal and Andrew Williams, ‘Equality of Resources and Procreative Justice’, in Justine Burley (ed.), *Dworkin and His Critics* (Malden, MA.: Blackwell, 2004). For an objection, see Olsaretti, ‘Children as Public Goods?’. For a reply, see Andrew Williams, ‘Demography and Distribution’, (unpublished manuscript).

³¹ Here, I follow White, *The Civic Minimum*, ch. 3. White also discusses *strict proportionality* conceptions of reciprocity, but this leads to unnecessary complications for our purposes.

contrast, the fair dues conception of reciprocity abandons this focus on *strict equivalence*. On this view, reciprocity demands simply that an individual ‘do her bit’ in return for the benefits she receives.³² What constitutes ‘doing her bit’ may vary depending upon a number of factors, including not only the value of benefits and burdens in question, but also the effort required to produce them.

The fair dues conception of reciprocity is more compelling than the strict equivalence conception of reciprocity. To see this, let’s consider a case in which Wendy and Xena each benefit by an identical amount, x . According to strict equivalence, both Wendy and Xena now may incur a duty of reciprocity to contribute x , and this remains so even if it is much more burdensome for Wendy to contribute this, say because of a disability or because of her less marketable talents. The fair dues conception of reciprocity sensibly avoids this result, by tailoring each individual’s duties according to, amongst other things, her abilities. Thus, the fair dues conception of reciprocity does a better job than the strict equivalence conception of reciprocity at meeting the demands of endowment-insensitivity.³³

The move to the fair dues conception of reciprocity is not only independently plausible, it also serves a secondary purpose. This, now, is my second point regarding the content of the productive duties that the reciprocity argument purportedly justifies. If we take the strict equivalence version of the reciprocity argument, then we do *not* have a justification for productive duties, strictly speaking. This is because, whereas productive duties are duties to increase the supply of resources, the present argument justifies a duty not to decrease the supply of resources. After all, an individual can meet the requirements of strict equivalence simply by contributing an amount identical in

³² White, *The Civic Minimum*, 59.

³³ I take this term from Dworkin, *Sovereign Virtue*, 89.

value to benefits that accrue to her. However, if we adopt the fair dues conception of reciprocity, then we can specify what it means for an individual to ‘do her bit’ in a way that ensures that her contribution must be greater than the value of the benefits that she receives. On this view, an individual wrongfully exploits others’ efforts to increase the supply of resources available to her if she does not in turn ‘do her bit’ to increase the supply of resources available to others.

7.2.3 The Insurance Argument

The third justification for productive duties relies upon the *insurance argument*. This justification views productive duties as the outcome of the model of fair insurance. Since I have already discussed the dynamics of this model in considerable detail, I shall not do so again here. None the less, it remains important for me to elaborate a little upon the idea that the model of fair insurance could justify productive duties, so as to clarify the broad structure of the insurance argument.

When I considered the model of fair insurance in the previous two chapters, I did so as a mechanism that helps us to theorise about the just response to occupational disadvantage. However, this is only one of the functions that it can serve. After all, it is designed to determine the just response to a wide range of instances of bad brute luck in individuals’ personal resources. As Dworkin himself notes, for instance, we may appeal to the model also to determine the just response to certain disability-related disadvantages. On this view, we identify the just response to some physical and cognitive disabilities by considering the insurance decisions that individuals would have made, if they had enjoyed fair access to an insurance market.³⁴ One such decision that

³⁴ Dworkin, *Sovereign Virtue*, chs 2 and 9.

insurers may consider making is to select a policy that imposes on individuals a requirement to make a socially beneficial contribution. This policy restricts insurers' permissible occupational choices in return for making available a more valuable supply of resources, which could be used to mitigate disadvantage.

Needless to say, this policy admits of many forms, depending upon how we understand the demands of the productive duties that it seeks to justify. Moreover, not all of these versions of the policy are equally appealing to insurers, and different versions may fare differently with respect to other considerations, such as the basic rights constraint and the consent constraint. As with the other two arguments in defence of productive duties, at this stage, I shall assume a generic version of the insurance argument rather than work with any specific version. Again, this is because I intend for my arguments to be compatible with a range of positions.

To summarise, then, my aim in this section has been briefly to outline three possible justifications of productive duties: the distributive justice argument, the reciprocity argument, and the insurance argument. Importantly, my aim has not been either to press objections against these arguments or to evaluate them more broadly. Instead, it is my purpose in the remainder of this chapter to consider more fundamental objections that seek to impugn all three arguments at a more general level.

7.3 The Social Unity Objection

My aim in this section is to defend the conviction that, at least under certain conditions, we have weighty reasons to refrain from imposing on individuals productive duties compliance with which is not publicly verifiable either to the duty-bearers or to other individuals. For reasons that should become apparent, I shall call this the *social unity objection*. This objection relies upon the following three premises:

The publicity claim: Publicity facilitates social unity, which is a valuable common good that individuals can realise through the joint pursuit of shared final ends.

The incompatibility claim: Some productive duties violate the demands of publicity.

The priority claim: When in conflict, we ought often to prioritise the demands of publicity over the achievement of the values that productive duties support.

Stated in this way, none of these claims is obviously true nor, for that matter, particularly clear. My aim in this section is to clarify and to defend each of these claims. In doing so, I defend the social unity objection and clarify its implications for the existence of productive duties.

7.3.1 The Publicity Claim

One aspect of the dispute between liberalism and communitarianism concerns their respective treatment of the idea that individuals can realise a valuable common good through the joint pursuit of shared final ends. (I follow Rawls in defining ‘final ends’ as ‘an end valued or wanted for its own sake and not solely as a means to something else’.³⁵) Whilst (some) communitarians claim that liberals neglect this idea, (some) liberals reply by pointing out the various ways in which liberalism is consistent with it,

³⁵ Rawls, *Political Liberalism*, 201.

and may even support it.³⁶ I am not interested in this conceptual question. Instead, I am interested in a separate, normative question: is it correct to claim that individuals can realise a valuable common good through the joint pursuit of shared final ends?

It is helpful to distinguish four kinds of common goods.³⁷ First, a good can be common in its distribution. This is the case with public goods – that is, goods that are both non-rival and non-excludable.³⁸ Second, a good can be commonly produced, whereby it requires cooperation between individuals in order to secure it. Third, a good can be commonly consumed, such that its benefits cannot be enjoyed in isolation, but can be enjoyed only with other individuals. Finally, a good can be common with respect to its beneficiary, in the sense that it benefits a collective entity.³⁹

The kind of common good with which we are concerned is common in the second and third sense. It is a good that is common in its production and enjoyment. One example of this kind of good is friendship: friendship requires cooperation

³⁶ See Simon Caney, 'Liberalism and Communitarianism: A Misconceived Debate', *Political Studies*, 40 (1992), 273-89. For a reply, see Stephen Mulhall and Adam Swift, 'Liberalisms and Communitarianisms: Whose Misconception?', *Political Studies*, 41 (1993), 650-6. And, for a further response, see Simon Caney, 'Liberalism and Communitarianisms: A Reply', *Political Studies*, 41 (1993), 657-60.

³⁷ Here, I follow Williams, 'Liberalism, Community, and Anti-Perfectionism'.

³⁸ A good is non-rival if greater possession of the good by one individual does not reduce others' ability to possess the good. A good is non-excludable if it is impossible efficiently to supply the good to one individual without supplying it to all.

³⁹ Following Dworkin, we can say that a good is common in this sense if it 'requires individuals to assume the existence of the group as a separate entity or phenomenon. The familiar but very powerful example of collective guilt provides a good example. Many Germans (including those born after 1945) feel responsible for what *Germany* did, not just for what other Germans did; their sense of responsibility assumes that they are themselves connected to the Nazi terror in some way, that they belong to the *nation* that committed those crimes'. See Dworkin, 'Constitutionalism and Democracy', *European Journal of Philosophy*, 3 (1995), 2-11 at 4 [emphasis in original].

between friends to maintain it, and its benefits cannot be enjoyed by an individual in isolation. A further example of this kind of common good is the pride that players in a football team take in playing a good game or that members of an orchestra take in a good performance.⁴⁰

An example of a common good that is relevant to our purposes is social unity. This is a very valuable common good that individuals can realise through forming or maintaining certain forms of political association. Very obviously, political associations of the kind that enable individuals to realise social unity require cooperation between individuals to maintain them, and their benefits cannot be enjoyed by an individual in isolation. This is why social unity is a common good.

More specifically, individuals realise social unity if the principles that regulate their affairs are suitably *public*.⁴¹ Publicity has three components.⁴² First, principles of justice are public if they yield duties that are *not self-effacing* – that is, they must be such that knowledge of the fact that individuals' generally accept these demands may be widely accessible to individuals. Second, the duties must be *determinate*, in the sense that they provide sufficiently clear standards of moral permissibility, such that (the vast majority of) individuals know how they are required to act. Duties are determinate in this sense not merely when individuals can attain knowledge of how they would be required to act if they were to have the relevant empirical information, it requires also that they in fact are able to attain knowledge of that empirical information.⁴³ Third, the duties must be *verifiable to others*, such that there can be widespread knowledge of the

⁴⁰ Rawls, *Political Liberalism*, 204. See also Dworkin, 'Constitutionalism and Democracy', 4.

⁴¹ Ibid., 35-40, 66-71, and 140-4.

⁴² Williams, 'Incentives, Inequality, and Publicity', 233. See also Rawls, *A Theory of Justice*, 55-6.

⁴³ This ambiguity is noted in Kasper Lippert-Rasmussen, 'Publicity and Egalitarian Justice', *Journal of Moral Philosophy*, 5 (2008), 30-49 at 41.

extent to which individuals on aggregate discharge their duties. We need not be able to attain knowledge of the extent to which any given individual discharges her duties.⁴⁴ The duty not to litter is verifiable to others in virtue of the fact that we can attain knowledge of the extent to which individuals on aggregate refrain from littering, even though we may not be able to attain knowledge of the extent to which any given individual refrains from littering.

To justify the publicity claim, I need also to defend the value of social unity, in addition to describing its properties. Here, I make two claims. The first claim relates to the intrinsic value of social unity. This idea is suggested by Rawls, who argues that, because of the joint pursuit of shared final ends it involves, social unity promotes an intrinsically valuable form of community.⁴⁵ He writes:

For whenever there is a shared final end, an end that requires the cooperation of many to achieve it, the good realized is social: it is realized through citizens' joint activity in mutual dependence on the appropriate actions being taken by others. Thus, establishing and successfully conducting reasonably just (though of course always imperfect) democratic institutions over a long period of time, perhaps gradually reforming them over generations, though not, to be sure, without lapses, is a great social good and appreciated as such. This is shown by the fact that people refer to it as one of the significant achievements of their history.⁴⁶

⁴⁴ Lippert-Rasmussen, 'Publicity and Egalitarian Justice', 41-2. In this respect, I also depart from the account of publicity discussed by Cohen, *Rescuing Justice and Equality*, 347, though it is not at all clear that I depart from Williams's own understanding.

⁴⁵ To claim that this is intrinsically valuable is not to claim that it is impersonally valuable. This form of community is intrinsically valuable *for* the individuals who produce and enjoy it. For further discussion of the relationship between intrinsic value and personal value, see L. W. Sumner, *Welfare, Happiness and Ethics* (Oxford: Clarendon Press, 1996); and Raz, *The Morality of Freedom*, 177-8.

⁴⁶ Rawls, *Political Liberalism*, 204. See also Ronald Dworkin, 'Liberal Community', *California Law Review*, 77 (1989), 479-504 at 499.

We can flesh this out by noting that there is intrinsic value in individuals being able justifiably to regard others as doing what is necessary to uphold reasonably fair terms of social cooperation. It is valuable to an individual both to regard others in this way *and* to be regarded in this way by others. Publicity facilitates each of these goods. The absence of either determinacy or verifiability to others would deny an individual the common good of social unity in much the same way that a football player would be denied a common good if she could not judge the quality of her team's performance or the way in which a violinist would be denied a common good if she could not hear – or otherwise appreciate – the contributions of the rest of her orchestra.

This defence of the intrinsic value of social unity relies upon an appeal to our intuitions. Admittedly, this may appear unsatisfactory. After all, not everyone shares this intuition and, even amongst those who do, not everyone sees its intuitive appeal as equally weighty. This is a familiar problem with making claims about intrinsic value. Since the value is intrinsic, it is not possible to give an *argument* in its defence. The best we can do, perhaps, is to point to analogous cases that share the same properties, but where the intuition about intrinsic value is stronger. In part, this is why I mentioned the case of friendship, as well as pride in a good performance.

In addition to this, social unity also aids the pursuit of stability. Psychologically speaking, individuals are more likely to comply with the demands of justice if they live in a society where it is public knowledge that others uphold reasonably fair terms of social cooperation. Understood in this way, stability is instrumentally valuable, but this is not its only value. It has intrinsic value as well. More specifically, there is intrinsic value in individuals upholding the principles that regulate their affairs *for the right reasons* – that is, in virtue of a shared sense of justice that motivates them to do what is necessary to maintain just institutions over time. Stability requires compliance with the

principles of justice, rather than merely conformity to their demands.⁴⁷ On this view, stability is a moral ideal, which is distinct from the kind of prudential concerns that are central to Thomas Hobbes's philosophy.⁴⁸ Summarising these ideas, Dworkin writes:

An integrated citizen accepts that the value of his own life depends on the success of his community in treating everyone with equal concern. Suppose this sense is public and transparent: everyone understands that everyone else shares that attitude. Then the community will have an important source of stability and legitimacy even though its members disagree greatly about what justice is. They will share an understanding that politics is a joint venture in a particularly strong sense: that everyone, of every conviction and economic level, has a personal stake - a *strong* personal stake for someone with a lively sense of his critical interests - in justice not only for himself but for everyone else as well. That understanding provides a powerful bond underlying even the most heated argument over particular policies and principles.⁴⁹

I have canvassed a number of reasons to accept the publicity claim. These relate to the intrinsic value of the kind of community that it makes possible, as well as to the instrumental and intrinsic value of stability. In advancing these reasons, I do not mean to deny that there may be other reasons to accept the publicity claim.⁵⁰ I focus on these only because they are, I think, the most compelling. Moreover, I should add that, though my discussion of these reasons has been brief, I believe that this simply reflects the fundamental nature of these reasons, rather than inadequacy in my defence of these claims.

⁴⁷ For further discussion of the distinction between compliance and conformity, see Raz, *Practical Reason and Norms*, 178-9.

⁴⁸ Rawls, *Political Liberalism*, 147-8 and 390.

⁴⁹ Dworkin, 'Liberal Community', 501-02.

⁵⁰ For a summary of these reasons, see Lippert-Rasmussen, 'Publicity and Egalitarian Justice'.

7.3.2 The Incompatibility Claim

Let's now turn our attention to second premise, according to which some productive duties violate the demands of publicity. This threat arises in virtue of the fact that some productive duties lack determinacy and/or are not verifiable to others. This is for at least two reasons. First, it is due to the highly complex calculations that we may need to engage in when determining both what an individual's productive duties require of her and the extent to which other individuals discharge their productive duties. Second, it is due to the fact that there may be inherent vagueness in some of the ideas on which the duties rely, such as Cohen's personal prerogative.

As evidence in support of this point, let us note that, in order for a productive duty to qualify as determinate and verifiable to others, an individual must have access to the following information: facts regarding the social contribution that she could make in various occupations; facts regarding how burdensome she would find these occupations; facts regarding the social contribution that other individuals could make in various occupations; and facts regarding how burdensome others would find these occupations. In the same vein, Williams adds:

In a large society, it is extremely unlikely that individuals could obtain reliable information about each others' relative levels of job satisfaction, the extent to which their past decisions render them responsible for inequalities in those levels, and the appropriate amount of financial compensation for any remaining unchosen disadvantages.⁵¹

Let me add two further remarks about the nature of these complications. First, they arise not only in so-called non-ideal worlds. That is, even if we suppose that every

⁵¹ Williams, 'Incentives, Inequality, and Publicity', 239.

individual is willing to discharge her productive duties, and thus not intending to deceive others, some productive duties would remain indeterminate and lack verifiability to others. This is because, given the complexity of the information being collected, there remains the possibility of error in calculating the particular requirements of one's own productive duties, and therefore also in reporting this to others. As Dworkin points out:

even honest people cannot know what they might earn at a given occupation without trying, and in the case of some professions, trying is impossible without half a lifetime of preparation. So a battery of new tests to discover latent talent would be necessary, and these would be vulnerable to many sorts of mistakes.⁵²

Second, these complications can arise with respect to both moral productive duties and legal productive duties. This point is most obvious in the case of moral duties. It is likely that, in many cases, many individuals lack the necessary skills to be able to identify the particular requirements of their own productive duties, as well as to determine the extent to which other individuals on aggregate discharge their duties. Though no doubt we could ameliorate these complications by widely circulating information that may be pertinent to such calculations, this move will not overcome the problems entirely, given the highly complex nature of the decisions involved.

The present point is also forceful with respect to legal productive duties – that is, productive duties that are enshrined in law. The claim is not that a given law may not be determinate or verifiable to others. In the vast majority of cases, this is plainly false. The point is that it may be similarly difficult, and in some cases more difficult, for the government to identify the particular requirements of a productive duty with

⁵² Dworkin, *Sovereign Virtue*, 100.

respect to given individuals. This is because the demands of many productive duties are sensitive to epistemically inaccessible information. A consequence of this is that, whilst the government may use the law to impose on individuals determinate duties compliance with which is verifiable to others, it is not obvious that these will correspond to individuals' productive duties. This is objectionable in so far as it is unjust for the state to compel individuals to act in ways that they have no duty to act.

Crucially, I do not claim that all productive duties violate the demands of publicity. There are some productive duties that may be determinate and verifiable to others, such that they do not violate the demands of publicity.⁵³ To illustrate this possibility, let's consider the productive duty to perform civilian service. Following Cécile Fabre, who is a proponent of this idea, we can characterise civilian service in terms of either a moral or a legal duty to provide personal services to vulnerable people for one year, at the age of eighteen.⁵⁴ Plausibly, we can construct defences of this practice that appeal to the distributive justice argument, the reciprocity argument, and the insurance argument. It is clear that the productive duty to perform civilian service meets the demands of publicity. It provides sufficiently clear standards of moral permissibility, such that (the vast majority of) individuals know how they are required to act, and there can be widespread knowledge of the extent to which individuals on aggregate discharge their duties.

An implication of the publicity claim and the incompatibility claim is that, at least under certain conditions, there is a conflict between the achievement of social

⁵³ Some proponents of productive duties explicitly defend duties that are determinate and verifiable to others. For example, see Frank Vandebroucke, *Social Justice and Individual Ethos in an Open Society* (London: Springer, 2001).

⁵⁴ Cécile Fabre, *Whose Body Is It Anyway? Justice and the Integrity of the Person* (Oxford: Oxford University Press, 2006), ch. 3. Fabre favours making civilian service a legal requirement.

unity and the achievement of the values that productive duties support. In other words, we may have to choose between a society in which there is a social unity but no productive duties, and a society in which there are productive duties but no social unity.

7.3.3 The Priority Claim

I want now to register my support of the claim that, when in conflict, we ought often to prioritise the demands of publicity over the achievement of the values that productive duties support. This is the priority claim.

One way in which to support the priority claim is to argue that a society can be just *only if* all duties meet the demands of publicity. In his earlier work, Williams invites this interpretation of his own view by referring to the demands of publicity as a ‘condition’, a ‘requirement’, or a ‘restriction’.⁵⁵ Plainly, however, this is not a plausible view. To see this, let’s consider the fact that, though nepotism is generally unjust, there are some contexts in which a small amount of it is morally permissible, such as in small businesses. Since the demands of this duty are difficult to determine, ought we therefore to refrain from imposing it on individuals? Obviously, the answer is ‘no’.

In response to this, there are two moves that we may make. One possibility is to claim that, though publicity is sufficient for social unity, it is not necessary for social unity. Under at least some conditions, therefore, lack of publicity does not in any way threaten social unity. I explore and defend this idea in further detail in the next subsection. For now, I shall focus on the second possibility, which treats social unity as a

⁵⁵ Williams, ‘Incentives, Inequality, and Publicity’, 233 and 242-5. See also Casal, ‘Marx, Rawls, Cohen, and Feminism’; and Cohen, *Rescuing Justice and Equality*, 364-5.

mere desideratum that may be sacrificed in the name of others values, when it is necessary to do so. On this view, even if we had social-unity-based reasons to refrain from imposing on individuals duties not to be nepotistic, these reasons would be defeated by our much weightier reasons to object to nepotism more generally. By pursuing this route, we are able to circumvent the problem raised by this case.

This response might be thought to invite a further objection. If social unity is a mere desideratum that may be easy to defeat, how can we uphold the priority claim? In other words, if social unity is a mere desideratum, why ought we to prioritise meeting the demands of publicity over imposing productive duties that may amply compensate for the loss of social unity?⁵⁶ The appropriate reply is to stress the fact that, though social unity is a mere desideratum, it is not one that is easy to defeat and that, relatedly, social unity is not a value that productive duties can easily compensate for. According to this view, whereas our reasons to prohibit nepotism are sufficiently weighty to defeat our concern for social unity, our reasons to impose productive duties on individuals are not. This is especially clear once we acknowledge that, whilst we have very few reasons to permit nepotism, we have very weighty reasons not to impose productive duties on individuals, given the sacrifices that they may require of individuals. For this reason, we can continue to endorse the priority claim.

My aim so far has been to defend the three premises of the social unity objection. Together, these claims provide sufficient grounds upon which to resist at least some of the conclusions of the distributive justice argument, the reciprocity argument, and the insurance argument. In the remainder of this section, I consider and reject three responses to the social unity objection. In doing so, I hope both to clarify the contents of the objection, as well as to strengthen my defence of it.

⁵⁶ This objection is pressed in Casal, 'Marx, Rawls, Cohen, and Feminism'.

7.3.4 Objections and Replies

The first challenge focuses on the publicity claim. This response concedes that social unity is a valuable common good, but it denies that this is the kind of claim that is admissible within political morality – or at least within any account of political morality committed to the liberal principle of legitimacy.⁵⁷ To demonstrate this concern, let's consider a society that realises social unity at the expense of the values that support productive duties. In this society, individuals are likely to exercise greater productive latitude than in a society in which productive duties exist and, therefore, at least some individuals are likely to be in one way worse off than they otherwise might be. Supposing that Yulia is one of these individuals, does she have a complaint?

A proponent of the social unity objection will answer this negatively, and will then cite the value of social unity to support this conviction. She will point out that, if we accept productive duties, then we deny individuals a number of valuable opportunities, including the opportunities to regard others, and to be regarded by others, as doing what is necessary to uphold reasonably fair terms of social cooperation. Is this, though, not simply an appeal to controversial values of the kind that liberals rule out? In other words, how ought the proponent to respond to Yulia, if she says: 'I appreciate that many people believe that this is intrinsically valuable, but I don't. Moreover, I don't see why I should be worse off than I otherwise might be as a result of others' appeal to this value that I reject'.

A proponent of the social unity objection could abandon her appeal to the intrinsic value of social unity and, instead, rely solely upon its instrumental value, which is more clearly admissible within political morality. In addition to this, though, there is

⁵⁷ This principle should be familiar given my earlier discussion of the demands of anti-perfectionism.

also a more fundamental (and less concessionary) reply. It notes that the liberal principle of legitimacy does not prohibit appeals to all controversial reasons. In particular, the principle permits us to appeal to controversial *political* reasons. For example, though our account of justice ought not to rely upon the idea that Christians, say, live more valuable lives, it can draw force from the claim that we owe others equal concern and respect. This distinction, though not always perfectly clear (and it is not my aim here to make it any clearer), is an intuitive one that we can exploit to respond to the present challenge.

A second challenge to the social unity objection arises from those who maintain that, when it is too informationally demanding to determine an individual's productive duties' particular requirements and/or the extent to which other individuals conform with their productive duties, we should be happy to rely upon a *good faith effort* from her and others (at least when it is reasonable to expect that effort to make at least some minimal positive difference).⁵⁸ In support of this response, Cohen provides us with the following example:

consider a camping trip where we all contribute roughly equally and enjoy the fruits of our cooperation roughly equally. We proceed communistically, under understandings of mutuality and forbearance that cannot be formulated crisply: we all try to put in comparable effort but no one can say how big a piece of effort has to be for one to have qualified as doing one's bit, *or* what size a share has to be for one to be able to say, 'I've take no more than my fair share'.⁵⁹

⁵⁸ See Casal, 'Marx, Rawls, Cohen, and Feminism'; and Cohen, *Rescuing Justice and Equality*, 352-4.

⁵⁹ Ibid. For a fuller presentation of this example, see G. A. Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009), 58-60.

Despite the fact that the duties described in this case violate the demands of publicity, social unity is not threatened. Or, if the lack of publicity does threaten social unity, then the social unity objection sets the demands of social unity at an implausibly high standard.⁶⁰ This analysis is important because, if correct, we may therefore conclude that publicity is not necessary for social unity, providing that each individual makes a good faith effort. The purpose of this example, therefore, is to help sever the link between social unity and the demands of publicity.

I am sympathetic to the claim that, though publicity is sufficient for social unity, it is not necessary. The case of nepotism provides further support for this verdict. However, we must be careful here. This is because our analysis of the demands of social unity must be sensitive to the costs that we can expect individuals to bear. In particular, lack of publicity does not threaten social unity only when we require an individual to bear costs that are much smaller in comparison with the benefits of imposing the duty on individuals. In the case of nepotism, for example, lack of publicity does not threaten social unity only because the costs of refraining from widespread nepotism are typically much smaller than the benefits of protecting individuals from living in a highly nepotistic society. When there is not this discrepancy in costs, the lack of publicity is likely to threaten social unity.⁶¹ As the comparative costs increase, it becomes increasingly important that an individual knows both what her duties demand of her and the extent to which others discharge their duties.

Two reasons support this conviction. First, without clear standards of moral permissibility, there is a worry that some individuals may be doing *too much* – that is,

⁶⁰ Cohen, *Rescuing Justice and Equality*, 352.

⁶¹ It is telling, therefore, that all of Cohen's examples are small-scale or involve the imposition of costs that are fairly small, at least in comparison with potential benefits created by imposing the duties. See *ibid.*, ch. 8.

because of the lack of determinacy, an individual may sacrifice more than she is required to sacrifice. If we suppose that Cohen's camping trip were to last for several decades, in a way that more closely resembles society, does this it remain an attractive one if no one knows with any great detail how great a burden she must bear and, as a result, some individuals mistakenly feel duty-bound to bear burdens that they are not in fact duty-bound to bear? It seems clear to me that the answer is 'no'. Second, in at least some cases, when an individual makes great sacrifices to serve a cause, it is reasonable for her to expect to know that others are not merely trying to contribute to the same cause – that is, making a good faith effort – but also that they are actually discharging their duties. In this case, verifiability to others serves an individual's interest attaining assurance, which sometimes is an important one.

Again, my aim is not to challenge the possibility that, under at least some conditions, an individual's good faith effort to discharge her productive duty is sufficient for social unity. To repeat, the aim of this section is not to cast doubt on productive duties as such, but instead to clarify the conditions under which we may accept them.

This section has been long and complex. My aim has been to defend the three premises that support the social unity objection. Very roughly, this objection states that we have weighty reasons to refrain from imposing on individuals productive duties that lack determinacy and/or are not verifiable to others. The upshot of this is that defenders of productive duties must show either that these duties meet the demands of publicity or, if they cannot show this, that their demands do not unduly threaten social unity. When stated in these terms, it is clear that the social unity objection limits the implications of the distributive justice argument, the reciprocity argument, and the insurance argument, but does not seek fully to impugn any of them.

7.4 The Basic Liberties Objection

In the remainder of this chapter, I consider three more fundamental objections to productive duties. Each of these objections claims to be more sweeping than the social unity objection, in the sense that it alleges to provide grounds upon which to object to a much larger set of productive duties than those that fail to meet the demands of publicity.

One obvious worry with productive duties is that they may unjustly curtail occupational freedom. There are various versions of this objection, and I shall consider two of them, in this and the subsequent section. The first of these is the *basic liberties objection*, which is suggested by Rawls, as well as some of his supporters, including Michael Titelbaum and John Tomasi.⁶² The basic liberties objection appeals to the principle of basic liberties to reject any argument that seriously restricts an individual's occupational choice. According to this objection, we ought to resist all three arguments in defence of productive duties on the grounds that they violate the principle of basic liberties, which has priority over the considerations that motivate each of the three arguments. On this view, an individual who would benefit from productive duties should accept that we ought not to do so, since she should recognise that the principle of basic liberties requires the absence of these productive duties.⁶³

Before we examine the foundations of the basic liberties objection, I shall issue two remarks regarding its content. First, the objection states that we must resist all

⁶² Rawls, 'The Basic Liberties and Their Priority'; Titelbaum, 'What Would a Rawlsian Ethos of Justice Look Like?'; and Tomasi, *Free Market Fairness*, ch. 2. Rawls later retracts the claim that freedom of occupational choice should enjoy protection under the principle of basic liberties. See Rawls, *Political Liberalism*, 228.

⁶³ Titelbaum, 'What Would a Rawlsian Ethos of Justice Look Like?', 321.

serious restrictions on occupational choice. It is consistent with this that minor restrictions do not violate the principle of basic liberties. What constitutes a serious restriction on occupational choice is something to which we shall later return. Second, the objection seeks to impugn restrictions on occupational choice whether or not these are backed up by legal coercion. The important point is that, according to the present objection, the adequate development and exercise of the two moral powers requires both legal and moral freedom of occupational choice.⁶⁴

There are three ways in which a defender of the basic liberties objection may attempt to show that the absence of productive duties is necessary for the adequate development or exercise of the two moral powers. Freedom of occupational choice may be necessary for the adequate development or exercise of: (i) the first moral power; (ii) the second moral power; or (iii) another basic right that is in turn necessary for the adequate development or exercise of the first moral power, the second moral power, or both.⁶⁵

The first option is unpromising. This is because, excluding extreme cases (including cases that involve highly unequal restrictions on individuals' occupational choices), there is no reason to think that productive duties are likely to frustrate the adequate development or exercise of the capacity to understand, to apply, and to act from with principles of political justice. I suspect that the adequate development and exercise of this capacity is consistent with even the most serious restrictions of occupational choice, including long-term legal conscription, for example. In the absence of empirical evidence to the contrary, I shall assume that this is the case.

⁶⁴ In section 7.5, I address in further detail the issue of whether mere moral demands that aren't enshrined in law can be reduce one's freedom.

⁶⁵ Rawls, *Political Liberalism*, 310-24.

The second option is more promising. According to this view, we ought to secure freedom of occupational choice because we ought to ensure the adequate development and exercise of the capacity to have, to revise, and rationally to pursue a conception of the good. More specifically, this view asserts that it is plausible to understand the basic right to freedom of occupational choice as protecting the opportunities necessary for the adequate *exercise* of the capacity rationally to pursue a conception of the good.

The third option requires immediate further clarification. A defender of this approach must specify the basic right whose protection requires freedom of occupational choice. Two possibilities stand out as promising. First, freedom of occupational choice may be necessary to ensure ‘the liberty and integrity of the person’, which does (supposedly) possess the status of a basic right. This is the option that Rawls pursues, when he includes freedom of occupational choice on his list of basic liberties.⁶⁶ Second, freedom of occupational choice may be necessary to ensure ‘freedom of association’, which similarly (supposedly) possesses the status of a basic right. This possibility is suggested by Von Platz, who offers it as an alternative interpretation of Rawls’s view.⁶⁷

No doubt, some freedom over how an individual spends her time is necessary to protect each of these three interests. An individual who lacks any freedom over how she may spend her time - say, someone in life-long servitude - clearly lacks the adequate exercise of the second moral power, the liberty and integrity of the person, and any meaningful freedom of association.⁶⁸ In so far as this is the case, the basic

⁶⁶ Rawls, ‘The Basic Liberties and Their Priority’, 50.

⁶⁷ Von Platz, ‘Are Economic Liberties Basic Rights?’, 27.

⁶⁸ I am reminded of the following observation by J. S. Mill: ‘The generality of labourers in this and most other countries, have as little choice of occupation or freedom of locomotion, are practically dependent

liberties objection provides grounds upon which to object to some productive duties. However, it is not clear that the objection retains force in a large range of cases. From the fact that life-long servitude violates the principle of basic liberties, we cannot conclude that very many more productive duties also violate the principle.

Of course, the extent to which restrictions on occupational choice are consistent with the principle of basic liberties depends upon how we understand the interests underlying the principle. To see this, let's consider the interest in the adequate exercise of the second moral power. What kinds of restrictions on occupational choice does this interest prohibit? Answering this question is tough. This is because it is not clear on what basis we should judge whether an individual exercises her second moral power to an *adequate* degree. Whilst it is clear that an individual in life-long servitude does not, and it is clear that most educated, white, men do, for other cases that fall in between these two extremes, perhaps we are left with only our intuitive judgement. This seems unsatisfactory, but perhaps this is as far as philosophy can take us.

Working in this fashion, Arnold asks us to consider the kind of society described in Edward Bellamy's *Looking Backward*, where every twenty-one year old is conscripted into the industrial army for three years to perform socially necessary labour for the benefit of society.⁶⁹ (This proposal is akin to an extended version of Fabre's civilian service.) Arnold contends that, even if we have decisive reasons to object to such a proposal, we cannot accuse it of violating the principle of basic liberties in particular.⁷⁰ He writes:

on fixed rules and on the will of others, as they could be in any system short of slavery.' See Mill, *Principles of Political Economy*, 234.

⁶⁹ Edward Bellamy, *Looking Backward* (New York: Dover, [1888] 1996).

⁷⁰ Though Alan Ryan calls it 'one of the least likeable utopias ever composed', he is not concerned with the principle of basic liberties. See Alan Ryan, *On Politics*, vol. 2 (New York: Liveright, 2012), 897.

True, Bellamy's scheme of forced labor *delays* the pursuit of a conception of the good; young adults must spend three years working for the common good before they can pursue their own good in their own way. But to delay is not to disable. After citizens have cleaned toilets, paved roads, etc., they may embark fully and completely on whatever life path strikes them as most worthy. They may, in short, adequately develop and fully exercise their moral powers despite having their freedom of occupational choice wholly denied for a significant period of time. And so freedom of occupational choice (in its usual liberal form) cannot be counted as a precondition for moral personality; nor, then, can it be regarded as a basic liberty.⁷¹

Arnold correctly points out that the interests that underpin the principle of basic liberties do not impugn Bellamy's proposal. These restrictions on occupational freedom are consistent with an individual's adequate exercise of her capacity rationally to pursue a conception of the good. Moreover, they also do not threaten (to a sufficient degree) her interest in the liberty and integrity of the person or her interest in freedom of association.

Arnold's project is in one way rather modest: he claims only that conscription for three years does not violate the principle of basic liberties.⁷² However, we can go further than this. Plausibly, once we specify the policy more carefully, the principle does not even supply us with the resources to object to much longer periods of conscription. For example, though at first blush many people may be inclined to deny that long-term conscription is consistent with an individual's adequate exercise of her capacity rationally to pursue a conception of the good, this intuition is much less bright when we specify that the conscript may enjoy plenty of discretionary time, as well as receive a fair income, with which to pursue her projects. This case illustrates how, even if the principle provides grounds upon which to object to certain productive duties, the

⁷¹ Arnold, 'Putting Liberty in its Place' [emphasis in original].

⁷² Arneson, 'Property Rights in Persons', 213-14.

objection depends upon contingent circumstances. The appropriate response to this may be to change these circumstances, so that conscripts enjoy more discretionary time, for example, rather than to revoke productive duties completely.

We can further strengthen this reply to the basic liberties objection by noting that none of the justifications of productive duties that I earlier canvassed claimed to dictate fully an individual's occupational choice. The distributive justice argument includes a personal prerogative, which grants an individual some latitude when making her occupational choices. The reciprocity argument concedes that there may be several ways in which an individual can 'do her bit' to increase the supply of resources available to others. And, the insurance argument imposes restrictions on an individual's occupational choice in a way that is sensitive to the opportunity cost of doing so. Each of these caveats casts further doubt on the claim that the principle of basic liberties provides sound grounds upon which to object to these arguments.

7.5 The Freedom Objection

The second objection that I shall consider is the *freedom objection*. This objection states that we ought to reject productive duties on the grounds that they severely restrict freedom of occupational choice. This is objectionable not because it violates the principle of basic liberties, but instead because freedom of occupational choice is valuable for other reasons, perhaps in part because it enables an individual more fully to pursue her conception of the good.⁷³ These arguments are distinct in so far as the

⁷³ As Paula Casal notes: within the context of what I call the freedom objection, freedom of occupational choice does not have 'any importance in itself, except insofar as this factor could enter the calculations indirectly as one of the many ingredients contributing to 'advantage'.' See Casal, 'Occupational Choice and the Egalitarian Ethos', 14-15.

freedom argument does not rely upon a claim about the adequate development and exercise of the two moral powers.

The freedom objection has considerable intuitive appeal. Certainly, if the presence of productive duties restricts the range of occupations that an individual is morally or legally permitted to pursue, many people are inclined to register that fact as reducing her freedom in a morally problematic way. When this reduction of freedom is minimal, perhaps it is fairly easy to justify, all things considered. However, when this reduction is more severe, as is the case with many productive duties, things appear much more problematic. This idea can help to explain what is morally problematic about conscription, even when it does not violate the principle of basic liberties.⁷⁴

Cohen offers one response to the freedom objection, which exploits the distinction between moral and legal restrictions. Cohen states that, whilst we jeopardise an individual's freedom if we legally enforce her compliance with her productive duties, we do not jeopardise her freedom if we do not legally enforce her compliance. According to this solution, which Cohen calls the *ethical solution*, we preserve an individual's freedom when we do not rely on any legal restrictions, but instead rely only on her willing compliance with an *egalitarian ethos*. This reply utilises that idea that the 'value of freedom lies in the absence of coercion'.⁷⁵ Cohen then adds:

There are a lot of very rich people in our market society who do not particularly relish work and who could get by without working at all, but who do choose to work out of a sense of social obligation. We do not judge their decision to honour what they regard as a social obligation as an unfree choice.⁷⁶

⁷⁴ Cohen, *Rescuing Justice and Equality*, 186.

⁷⁵ Ibid., 195. See also Kagan, *The Limits of Morality*, 237-8.

⁷⁶ Cohen, *Rescuing Justice and Equality*, 192-3.

The force of this reply depends upon the accuracy of its characterisation of the value of freedom. Or, more precisely, the force of this reply depends upon the accuracy of its characterisation of the value of an ideal that we have reason to care about, whether or not it is properly called ‘freedom’. In other words, even if Cohen were correct to claim that ‘freedom is secured by the absence of legal obligation’, this would be insufficient as a reply if we none the less also had reasons of a different but similar kind to object to productive duties that are not legally enforced.⁷⁷ The more general point, then, is that, since we are interested in a normative question, it may not be best to begin our inquiry with conceptual analysis.⁷⁸ Therefore, though I shall use the word ‘freedom’, nothing of substance turns on this, and so please feel free to select a different label if you think, as a conceptual matter, that freedom is secured by the absence of legal obligation.

Cohen’s claims about the value of the absence of legal enforcement are implausible. Drawing upon an example devised and discussed by Raz, Paula Casal invites us to consider the following case:

Jack of all Trades: Jack is able to perform a wide range of occupations. A range of options are offered to him one by one, starting with the opportunity to become an electrician, which is not what Jack prefers. Unfortunately, every time Jack refuses an occupation, an innocent person is murdered.⁷⁹

Commenting on this case, Raz explains that Jack ‘is acting freely if he agrees to murder in order to become a dentist rather than an electrician’, but ‘if he chooses the right way and agrees to be an electrician in order to avoid becoming a murderer then his choice

⁷⁷ Cohen, *Rescuing Justice and Equality*, 194.

⁷⁸ Casal, ‘Occupational Choice and the Egalitarian Ethos’, 9-10.

⁷⁹ Raz, *The Morality of Freedom*, 379. Quoted in Casal, ‘Occupational Choice and the Egalitarian Ethos’, 8.

is forced'.⁸⁰ An implication of this, therefore, is that if Jack 'is to be moral then he has no choice, just as the person struggling for survival has no choice if he is to stay alive'.⁸¹ This has fatal consequences for Cohen's reply to the freedom objection. As Casal points out: 'if Cohen is right about the egalitarian ethos, and talented Jill's moral survival requires her to become a captain of industry, then her choice is free if she ignores the ethos and pursues other careers, but not if she obeys the ethos and delivers what Cohen claims justice demands'.⁸² The upshot of this is that we have reasons to resist this reply. What matters for our purposes is not whether, as a conceptual matter, mere moral duties reduce freedom. Rather, the most pressing worry relates to the fact that productive duties may require an individual to make considerable sacrifices when making occupational choices.

A more promising reply to the freedom objection is one that seeks to *justify* the moral demands that productive duties may impose. According to this reply, though we should concede that productive duties reduce freedom, we ought to maintain that this is morally permissible, all things considered, given the force of the arguments that sanction this conclusion. To be sure, it is not enough merely to re-state the three arguments in defence of productive duties. After all, proponents of the freedom objection simply reject the consequences of these arguments as intuitively implausible, precisely because they sanction too great an interference with freedom. For this reason, we must say more to defuse this worry.

One way in which we can do this is by incorporating a concern for freedom of occupational choice within the productive duties that we impose on an individual. We can achieve this by stipulating that one of the ends that productive duties serve is to

⁸⁰ Raz, *The Morality of Freedom*, 379.

⁸¹ Ibid.

⁸² Casal, 'Occupational Choice and the Egalitarian Ethos', 9.

secure occupational autonomy for all, where this is understood in terms of an adequate range of (morally permissible) occupational opportunities for all individuals. On this view, we may require an individual to work to enhance others' occupational opportunities by, say, working to rebuild a local school, so that children there can enjoy a decent education.⁸³ As Casal points out, the resulting ethos, which we can call the *revised ethos*, has the following attractive property:

Jill cannot now complain to have lost her occupational autonomy to others who preserved theirs, for the revised ethos protects the occupational autonomy of *all*, the more skilled and the less skilled, and so also protects Jill's. The revised ethos will still ask Jill to make sacrifices for others, but it would not be so directive as to leave her no (morally permissible) choice.⁸⁴

This reply to the freedom objection is promising because it recognises the importance of free occupational choice, but then appeals to this fact in order to justify productive duties. After all, given the importance of free occupational choice, it is especially pressing that we arrange society in such a way that every individual enjoys it, and, if this means that we must impose productive duties on an individual, we should be willing to impose that cost.⁸⁵

An upshot of this is that we may in principle be morally required to conscript individuals, in order to ensure that they discharge their productive duties. Though many readers will find this troubling, I do not, at least if we understand conscription very loosely, as giving an individual a range of options to select from. To be sure, this

⁸³ Ibid., 15.

⁸⁴ Ibid., 16.

⁸⁵ Ibid., 15. See also Arneson, 'Property Rights in Persons', 213-14; and Paul Bou-Habib, 'Liberal Egalitarianism and Workfare', *Journal of Applied Philosophy*, 21 (2004), 257-70 at 263.

is not normally how we conceive of conscription and I hope that it is much more intuitively appealing than the idea that might otherwise come to mind. Moreover, even if the legal restriction on an individual's occupational choice is in principle morally required, we may also have a wide range of reasons not to introduce such a policy in practice.⁸⁶ A consequence of this is that these arguments are perhaps less radical than they may initially appear.

7.6 The Fairness Objection

Having rejected two objections to productive duties that appeal to claims about the value of free occupational choice, I shall now turn my attention to a different kind of objection, which appeals to considerations of fairness. We can call this the *fairness objection*. To introduce this objection, let's consider the following case, which is a variation on one devised by Philippe Van Parijs:

Lonely and Lovely: Lonely and Lovely are siblings. Regarding ambition, both siblings are identical: they both care comparatively little for a high income, while attaching great importance to the enjoyment of free time. Regarding talent, they are identically mediocre in all respects except one: unlike Lonely, Lovely is a wonderful actress. As a result, there is much greater demand for Lovely to work in television.⁸⁷

⁸⁶ Cohen outlines a number of reasons for not turning moral duties in to legal duties. See his *Rescuing Justice and Equality*, 218-22. For replies, see Cécile Fabre, 'Distributive Justice and Freedom: Cohen on Money and Labour', *Utilitas*, 22 (2010), 393-412; and Otsuka, 'Freedom of Occupational Choice'.

⁸⁷ Van Parijs, *Real Freedom for All*, 64. In the original case, there is greater demand for Lovely to work in a peep-show. Given that we have independent objections to peep-shows that may affect our reactions to this case, I have changed the example so as to avoid this.

Both Lonely and Lovely would hate working in television. After all, they each attach great importance to the enjoyment of free time, which is a good that they would be denied if they had to work in television.⁸⁸ We can assume, though, that, because of her acting talents, Lovely can make more of a social contribution than Lonely by working in television. As a result of this, whereas Lovely may have a productive duty to work in television, Lonely will not, and so Lonely may be morally permitted to select from a much larger range of occupations. Following Dworkin, Van Parijs contends that this amounts to the *slavery of the talented*.⁸⁹ Elaborating on this, he writes:

Far from being able to indulge in the same leisurely life pattern as her sibling, she is forced to devote a large chunk of her time...doing a job she thoroughly hates. Is this not frightfully unfair to Lovely, indeed a form of slavery that violates self-ownership and constitutes an obvious insult to the ideal of real-freedom-for-all?⁹⁰

Before I analyse this quote in any detail, we should consider a more general response to this worry. This response appeals to the possibility that Lovely's productive duties may grant her some latitude that permits her not to work in television. This possibility should be familiar given my presentation of productive duties, as well as my response to the freedom objection, which suggests incorporating a concern for occupational autonomy. The problem with this response is that, even if we advance an account of productive duties that yields this result, it remains possible that Lonely will be granted a much larger range of occupational opportunities to select

⁸⁸ Ibid.

⁸⁹ See Dworkin, *Sovereign Virtue*, 90; and Van Parijs, *Real Freedom for All*, 75. Miriam Cohen Christofidis challenges this terminology but, as far as I can tell, nothing substantive turns on this. See her 'Talent, Slavery and Envy in Dworkin's Equality of Resources', *Utilitas*, 16 (2004), 267-87 at 271.

⁹⁰ Van Parijs, *Real Freedom for All*, 64.

from. To illustrate this possibility, we can suppose that, whereas Lovely has a productive duty either to work in television or put her acting talents to another good use, Lonely does not have such a duty, and so is morally permitted to select from a much larger range of occupations. This remains unfair and is therefore in need of a justification if we are to deem it an acceptable result.

It is helpful, then, for us to look more closely at Van Parijs's quote. Importantly, we can distinguish two claims. First, he makes a claim about *fairness*: Lovely is treated unfairly in comparison with Lonely. Second, he makes a claim about *enslavement*: Lovely is unjustly enslaved as a result of her productive duty. It is useful here to distinguish between two senses in which we might consider Lovely – or, more generally, ‘the talented’ – enslaved by productive duties. A complaint of *comparative slavery* depends upon the existence of non-enslaved individuals whose circumstances are envied by an enslaved individual. By contrast, a complaint of *non-comparative slavery* does not depend upon the existence of such individuals.⁹¹ When Van Parijs claims that productive duties are ‘frightfully unfair to Lovely’, he makes a claim about comparative slavery, since it is unfair to Lovely in comparison with Lonely. By contrast, when he claims that productive duties violate ‘self-ownership’ and constitute ‘an obvious insult to the ideal of real-freedom-for-all’, he makes a claim about non-comparative slavery.

I shall address each of these objections, beginning with the claim about non-comparative slavery. On this view, the objection to productive duties is that it severely restricts Lovely's occupational choices. This objection is not about fairness; it is that productive duties either violate self-ownership or are an insult to freedom.⁹² However, if we formulate the objection in either of these terms, it is identical to previous

⁹¹ Williams, ‘Resource Egalitarianism and the Limits to Basic Income’, 101.

⁹² Ibid., 102.

objections that I have already rejected. If the objection to productive duties is based upon claims about self-ownership, it is not compelling, since we should reject the right of self-ownership. I shall not say anything in defence of this rejection, other than to direct the reader to section 6.1.2, where I briefly outlined my reasons to reject such a right. But, if we formulate the objection in terms of an insult to freedom, then it is simply a version of the freedom objection, which I dealt with the previous section. Thus, however we interpret this objection, it lacks independent force against productive duties.

Let's turn, then, to the claim about comparative slavery. On this view, Lovely's complaint is that, as a result of productive duties, she now envies the circumstances of some other individual, namely Lonely.⁹³ This is the *fairness objection*. Crucially, though, in order to know whether Lovely can make such a complaint, we need further information. Williams puts the point as follows:

We are told that Lovely has the same income-leisure trade-off as her sibling, and prefers the latter's leisure prospects. But we are unaware of what could be termed her beauty-leisure trade-off. It is, therefore, an open question whether Lovely does, or does not, prefer Lonely's leisure prospects when combined with the personal endowment on which they depend.⁹⁴

To clarify, then, we must distinguish two possibilities.⁹⁵ According to the first possibility, Lovely does not envy Lonely's combined leisure and beauty resources, say because she strongly values her acting talents. If this is the case, Lovely does not regard herself as worse off than Lonely, and so cannot make a comparative complaint in order

⁹³ Ibid., 101.

⁹⁴ Ibid., 102.

⁹⁵ Ibid., 101.

to establish that she is treated unfairly.⁹⁶ According to the second possibility, Lovely does envy Lonely's combined leisure and beauty resources, say because she values her acting talents only very weakly, or perhaps not at all. If this is the case, Lovely regards herself as worse off than Lonely, and so is a victim of comparative slavery. This is the version of the case with which we should be concerned.

If this is the case, we can defuse Lovely's complaint by demanding that others compensate her for discharging her productive duties. Perhaps we could tax Lonely, and use the revenue to compensate Lovely for her additional burdens. Perhaps we could allow Lovely to retire earlier than otherwise, and then force Lonely to bear the additional costs necessary to train her replacement. More generally, the recommendation is that individuals who are not unfairly burdened as a result of their productive duties should compensate individuals who would otherwise be unfairly burdened as a result of their productive duties. This compensation could be either pecuniary or non-pecuniary. Of course, when determining how much compensation an individual owes, we must select a level that does not reverse the direction of envy, such that those who are not unfairly burdened as a result of productive duties now envy those who would otherwise be unfairly burdened as a result of their productive duties.⁹⁷

Though the example of *Lonely and Lovely* has some initial intuitive force, it turns out that Van Parijs's analysis conflates three distinct objections to productive duties. The first relates to self-ownership; the second is the freedom objection; and the third objection is the fairness objection. I responded to each of the first two objections earlier in this thesis, and the third objection lacks force against productive duties, since

⁹⁶ Christofidis, 'Talent, Slavery and Envy in Dworkin's Equality of Resources', 275-6.

⁹⁷ Williams, 'Resource Egalitarianism and the Limits to Basic Income', 101; and Arneson, 'Property Rights in Persons', 206.

it fails to acknowledge the possibility of having additional duties to compensate those individuals who would otherwise be unfairly burdened as a result of productive duties. For this reason, we can reject the fairness objection.

7.7 Conclusion

My aim in this chapter has been to defend the possibility of at least some productive duties, including, for example, the productive duty to perform civilian service. Though I have outlined three possible justifications for productive duties, my aim has not been to defend productive duties as such. Rather, I have defended their *possibility* by analysing various objections to them. The first of these objections is the social unity objection, according to which we have weighty reasons to refrain from imposing on individuals productive duties that fail to meet the demands of publicity. This objection is forceful but it does not entail that we reject productive duties wholesale. As I earlier suggest, this objection provides a set of criteria against which we may determine the acceptability of various productive duties.

In the remainder of the chapter, I then considered three further objections to productive duties, each of which seeks to achieve more than the social unity objection, by casting doubt on the plausibility of a much larger set of productive duties. These are the basic liberties objection, the freedom objection, and the fairness objection. Here, I argued that, to the extent that these objections have force against productive duties, this is because of contingent circumstances that we can change. This is crucial, since none successfully shows that we should reject productive duties rather than change those circumstances in a way that undermines the force of the objection. It is for these reasons that we lack grounds upon which to dismiss productive duties beyond what the social unity objection implies.

8 Conclusion

My approach in this thesis has been to draw upon and to integrate insights from a range of sources in order to make progress with developing an account of justice in work. Rather than rehearse my arguments or restate their conclusions, I shall conclude by drawing attention to one of the limitations of my investigation.

Existing job markets are a source of grave and ongoing injustice, and it is my concern for the victims of these injustices that motivates this project. Despite this, for the most part, my analysis has operated in abstract and idealised terms that to some readers may seem far removed from the choices many of us currently face, as participants in democratic government.¹ Indeed, some critics may even maintain that my theorising is *too far removed*, and that an account of justice in work must say more about the demands that justice makes upon us here and now. In the absence of this pay-off, maybe the problems that I have addressed are little more than philosophical puzzles; perhaps fun to think about, but otherwise pointless.²

It is misleading to write as if there is a single concern that unites these critics. It is more accurate to say that there is a set of closely related objections with a similar or common goal. I shall not attempt either to disentangle all of these objections or to respond to them separately. Instead, I shall issue some quite general remarks that I hope will ameliorate a wide range of these concerns. Given their brevity, I intend for my claims to be gestural rather than count decisively against these objections.

¹ It is now commonplace to distinguish between abstraction and idealisation, as I have done. For discussion of this distinction, see Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), 40-1.

² Colin Farrelly, 'Justice in Ideal Theory: A Refutation', *Political Studies*, 55 (2007), 844-64.

One of Rawls's stated aims is to describe what a perfectly just society might be like.³ On one reading of this thesis, this too is one of my aims. Or, more precisely, the aim might be to describe that part of an ideally just society that is (most) relevant to the arrangement and distribution of work. Irrespective of the merits or faults of that particular ambition, this is not how I see my contribution. For that matter, it is also not how I see most other abstract and idealised contributions within political philosophy. Here, I agree with Adam Swift, who writes:

Personally, I don't actually read the post-Rawlsian paradigm as being overly concerned with the specification of a fully just society. I see it rather as exploring the various value considerations at stake – what rights people have, how considerations of equality and fairness fit in, how procedural values or legitimacy connect up, and so on.⁴

The point is that the kind of account that I advance provides us with a framework for analysing job markets, as well as the tools to examine the comparative weight of the many competing reasons that we may have. In this respect, our account of justice in work furnishes us with the analytic resources to think more systematically about the democratic choices that many of us currently face.⁵

This is not to say that things become straightforward, once we have at our disposal an account of justice in work. Even if an account of justice in work can provide some guidance about the policies we ought to pursue, there are plainly very many further complicating factors. Given this, I doubt that we can make much more

³ Rawls, *Justice as Fairness*, 13.

⁴ Adam Swift, 'Comment on *Contract and Domination*', *Journal of Political Ideologies*, 13 (2008), 246-50 at 248.

⁵ Alan Hamlin and Zofia Stemplowska, 'Theory, Ideal Theory and the Theory of Ideals', *Political Studies Review*, 10 (2012), 48-62.

progress whilst continuing to theorise at very general levels. These investigations call for more empirically-informed analysis.⁶ Though I have not opted to pursue these channels in this thesis, these are the issues to which I intend to turn my attention in future work.

⁶ Adam Swift and Stuart White, 'Political Theory, Social Science, and Real Politics', in David Leopold and Marc Stears (eds), *Political Theory: Methods and Approaches* (Oxford: Oxford University Press, 2008).

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